R25. Administrative Services, Finance.

R25-14. Payment of Attorneys Fees in Death Penalty Cases.

R25-14-1. Authority and Purpose.

(1) This rule is implemented pursuant to Section 78-35a-202.

(2) The purpose of the rule is to establish the procedures and maximum compensation amounts to be paid for attorneys fees and litigation expenses by the Division of Finance to legal counsel appointed by district courts to represent indigent persons sentenced to death who request representation to file an action under Title 78, Chapter 35a, Post-Conviction Remedies Act.

R25-14-2. Request for Payment.

In order to obtain payment for attorney's fees and litigation expenses, counsel appointed by a district court, pursuant to Section 78-35a-202(2)(c), shall present to the Division of Finance a certified copy of the district court order of appointment of legal counsel and a signed Request for Payment verifying the work has been performed as provided in Section R25-14-4 pursuant to the schedule of payments set forth in that section.

R25-14-3. Scope of Services.

(1) All appointed counsel, by accepting the court appointment to represent an indigent client sentenced to death and by presenting a Request for Payment to the Division of Finance, agree to provide all reasonable and necessary post-conviction legal services for the client, including timely filing an action under the provisions of Title 78, Chapter 35a, Post-Conviction Remedies Act and representing the client in all legal proceedings conducted thereafter including, if requested by the client, an appeal to the Utah Supreme Court.

(2) All appointed counsel agree to accept as full compensation for the legal services performed and litigation costs incurred the amounts provided in the Schedule of Payments of Attorneys Fees found in Section R25-14-4.

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

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

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

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

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

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

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

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

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

(b) the district court finds:

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

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

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

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

The Division of Finance shall pay reasonable litigation expenses not to exceed a total of $20,000.00 in any one case for court approved investigators, expert witnesses, and consultants. Before payment is made for litigation expenses, the appointed counsel must submit a request for payment to the Division of Finance including:

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

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

R25-14-6. Withdrawal of Counsel.

(1) If an attorney appointed under Section 78-35a-202 is permitted to withdraw by the court or, due to death or disability, is unable to continue, the attorney shall be paid only for the actual work performed to the date of withdrawal as certified by the court.

(2) If withdrawal is ordered by the court because of counsel's improper conduct or the court finds that a foreseeable conflict of interest which should have been disclosed prior to appointment existed, all compensation received by the attorney shall be repaid to the Division of Finance.

KEY: attorneys, fees, capital punishment, post-conviction*
January 22, 2001 78-35a-202

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

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

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

R27-7-2. Accident Reporting and Liability.

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

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

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

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

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

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

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

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

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

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

R27-7-4. Alcohol and Drugs.

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

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

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

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

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

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

R27-7-5. Seat Restraint Use.

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

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

R27-7-6. Defensive Driving.

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

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

(b) Certification shall be renewed bi-yearly.

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

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

R27-7-7. Smoking in State Vehicles.

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

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

R27-7-8. Loaner Vehicles.

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

vehicle from the Motor Pool.

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

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

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

KEY: accidents, incidents, tickets, ARC
January 31, 2001 63A-9-401(1)(c)(viii)

R58. Agriculture and Food, Animal Industry.
R58-10. Meat and Poultry Inspection.
R58-10-1. Authority.

Promulgated under authority of Section 4-32-7.

R58-10-2. Purpose.

The purpose of this rule is to establish standards and procedures for the meat and poultry product inspection programs, which shall at least equal or exceed those imposed by the Federal Meat Inspection Act and Poultry Inspection Act.

R58-10-3. Federal Regulations Adopted by Reference.

Accordingly, the Division adopts the meat and poultry inspection standards and procedures as specified in Title 9, Chapter III, Sub-Chapter A, Agency Organization and Terminology; Mandatory Meat and Poultry Products Inspection and Voluntary Inspection and Certification, Part 300 through 381; Sub-Chapter D, Food Safety and Inspection Service Administrative Provisions. Part 390 and 391, Sub Chapter E, Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, Part 416, 417, 424, 500, and Sub-Chapter I, Egg Products Inspection Act, Part 590. Code of Federal Regulations, Animal and Animal Products, 9 CFR 300 through 590, January 1, 2000 edition, which is incorporated by reference within this rule.

KEY: food inspection
January 3, 2001 **4-32-7**
Notice of Continuation November 8, 2000

R63. Agriculture and Food, Chemistry Laboratory.
R63-1. Fee Schedule.
R63-1-1. Authority.

Promulgated under authority of Section 4-2-10.

R63-1-2. Analytical Service Fees.

Effective August 1, 1984 all charges made for analytical services by the Department of Agriculture and Food Laboratory will be computed on a fee of $30.00 per hour.

Examples:

TABLE 1

Feed and Meat:	One Sample Only	Two/Five Samples	Six or more Samples
Moisture	15.00	10.00	5.00
Fat	30.00	25.00	20.00
Fiber	45.00	40.00	35.00
Protein	25.00	20.00	15.00
NPN	20.00	15.00	10.00
Ash	15.00	10.00	5.00

TABLE 2

Fertilizer:	One Sample Only	Two/Five Samples	Six or more Samples
Nitrogen	25.00	20.00	15.00
$P_2 O_5$	30.00	25.00	20.00
$K_2 O$	25.00	20.00	15.00

TABLE 3

Trace Elements (Atomic Absorption):	One Sample Only
Iron	20.00
Copper	20.00
Zinc	20.00
Mn	20.00
Mo	40.00
Pb	20.00

TABLE 4

Trace Elements in Water:	One Sample Only
Iron	10.00
Copper	10.00
Zinc	10.00
Mn	10.00
Mo	10.00
Pb	10.00

TABLE 5

Vitamins:	One Sample Only	Two/Five Samples	Six or more Samples
Vitamin A	60.00	55.00	50.00
Vitamin B	60.00	55.00	50.00
Vitamin B^2	60.00	55.00	50.00
Vitamin C	60.00	55.00	50.00
Riboflavin	60.00	55.00	50.00
Minerals:			
Calcium	25.00	20.00	15.00
NaCl	25.00	20.00	15.00
Iodine	25.00	20.00	15.00

TABLE 6

Toxicology:	One Sample Only
Strychnine	30.00
Arsenic	30.00
Other Poisons	30.00/hour
Coggins Test:	7.50

Cost for other analytical tests would depend upon the time required at the rate of $30.00 per hour.

KEY: chemical testing
1987 **4-2-2**
Notice of Continuation January 10, 2001

R68. Agriculture and Food, Plant Industry.
R68-1. Utah Bee Inspection Act Governing Inspection of Bees.
R68-1-1. Authority.

Promulgated under the authority of Section 4-11-3.

R68-1-2. Registration.

Every owner or person coming into possession of one or more colonies of bees within the State of Utah shall register with the Department of Agriculture and Food in accordance with the provisions in Section 4-11-4 of the Utah Bee Inspection Act within 15 days after coming into possession of such bees.

R68-1-3. Apiary Identification.

Each apiary location whether permanent or temporary shall be identified by a sign showing the owner's registration number issued by the Utah Department of Agriculture and Food at least one inch in height, easily readable and displayed in a conspicuous location in the apiary; or similar identification conspicuously displayed on one or more hive bodies within the apiary. Any apiary not so identified shall be considered abandoned and shall be subject to seizure and destruction as provided for in Section 4-11-14.

R68-1-4. Assistance in Locating Apiaries.

All beekeepers shall personally assist the department or county bee inspectors in locating their apiaries, or provide accurate and detailed information as to location of all bee hives under their control or possession.

R68-1-5. Salvage Operations.

All salvage operations with respect to wax, hives and appliances from diseased colonies shall be performed in a tightly screened enclosure to prevent the entrance of bees according to the following procedure:

A. Frames and comb from the diseased hives shall be held for at least 30 minutes in boiling water (212 degrees F) before any wax is removed.

B. After removal from the boiling water the frames must be destroyed or boiled for a minimum of 20 minutes in a solution of lye water containing no less than 10 pounds of lye (Sodium Hydroxide) for each 100 gal. of water.

C. Hive bodies, supers, covers and bottom boards must be thoroughly scorched or boiled for a minimum of 20 minutes in the lye water solution.

KEY: beekeeping
1987 **4-11-3**
Notice of Continuation January 16, 2001

R68. Agriculture and Food, Plant Industry.
R68-2. Utah Commercial Feed Act Governing Feed.
R68-2-1. Authority.

Promulgated under authority of Section 4-12-3.

R68-2-2. Definition and Terms.

A. The names and definitions for commercial feeds shall be the Official Definition of Feed Ingredients adopted by the Association of American Feed Control Officials, except as the Commissioner designates other wise in specific cases.

B. The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the AAFCO, except as the Commissioner designates otherwise in specific cases.

C. The following commodities are declared exempt from the definition of commercial feed, under the provisions of Section 4-12-2: hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials: provided that these commodities are not adulterated within the meaning of Section 4-12-2.

R68-2-3. Registration of Products.

A. All commercial feeds and feed ingredients except those specifically exempted herein shall be officially registered annually with the Utah Department of Agriculture and Food.

1. Application for registration shall be made to the Department upon forms prescribed and provided by the Department and the applicant shall furnish all information requested thereon, being totally responsible for the accuracy and completeness of all required information.

2. A registration fee per product, determined by the department pursuant to Subsection 4-2-2(2) shall be paid by the applicant annually.

3. Each registration is renewable for a period of one year upon payment of the annual renewal fee per product, determined by the department pursuant to Subsection 4-2-2(2) which shall be paid on or before December 31 of each year. If the renewal of a commercial feed or feed ingredient registration is not filed prior to January 1 of any one year, an additional fee of $5.00 per product shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that commercial feed or feed ingredient shall be issued.

4. Whenever the name of a feed product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

B. Any person who distributes customer-formula feed shall obtain a permit annually from the Department before distribution of such feeds.

1. Application for a customer-formula feed distribution permit shall be made to the Department upon forms prescribed and furnished by the Department accompanied by the annual renewal fee of $50.00.

2. Each renewal fee shall be paid on or before December 31 of each year. If the renewal fee for customer-formula feed distribution permit is not filed prior to January 1 of any one year, an additional fee of $5.00 shall be assessed and added to the original permit fee and shall be paid by the applicant before the permit shall be issued.

R68-2-4. Commercial Feed Labeling.

Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this rule on the principal display panel of the product in the following general format.

A. Net weight.

B. Product name and brand name if any.

C. If a drug is used:

1. The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

2. The purpose of medication (claim statement).

3. An active drug ingredient statement listing the active drug ingredients by their established name and the amount in accordance with Subsection R68-2-7-D.

4. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Section R68-2-9, appear elsewhere on the label.

D. Purpose statement

1. The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended.

2. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, specie and purpose while being consistent with the category of animal class defined, which may include but not limited to including the weight range(s), sex or ages of the animal(s) for which the feed is manufactured.

3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

4. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specification are provided by the end user.

5. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

E. The guaranteed analysis of the feed shall include the following items, unless exempted in Section R68-2-4, and in the order listed:

1. Minimum percentage of crude protein.

2. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Section R68-2-7.

3. Minimum percentage of amino acids when required by animal class or specie.

4. Minimum percentage of crude fat.

5. Maximum percentage of crude fiber.

6. Maximum percentage of acid detergent fiber when

required by animal class or specie.

7. Maximum percentage of moisture in pet foods.

8. Minerals, to include, in the following order: (a) minimum and maximum percentages of calcium (Ca), (b) minimum percentage of phosphorus (P), (c) minimum and maximum percentages of salt (NaCl) and sodium, and (d) other minerals.

9. Vitamins in such terms as specified in Section R68-2-7.

10. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.

11. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.

12. Exemptions.

a. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than 6 1/2% of Calcium, Phosphorus, Sodium and Chloride and does not serve as a principal source of that mineral to the animal.

b. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

c. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

F. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements.

1. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Commissioner.

2. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

a. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

b. The manufacturer shall provide the feed control officials, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

3. The registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Department. This list shall be made available to the feed purchaser upon request.

G. Name and principal mailing address of the manufacturer, registrant, or person responsible for distributing the feed.

H. The lot number or batch number shall be on each label and may be the date the feed product was manufactured.

I. Commercial Livestock Feed Labeling requirements.

1. Swine formula feeds.

Animal classes: Pre-starter - 2 to 11 pounds, Starter - 11 to 44 pounds, Grower - 44 to 110 pounds, Finisher (market) 110 to 242 pounds, gilts, sows and adult boars, lactating gilts and sows.

Guaranteed Analysis, Swine complete feeds and supplements, (all animal classes).

Minimum percentage of crude protein, lysine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum selenium in parts per million (ppm). Minimum zinc in parts per million (ppm).

2. Poultry Feeds, Layers, Broilers, and Turkeys.

Animal classes:

a. Layers: - chickens that are grown to produce eggs for food, i.e., table eggs. Starting/growing - from day of hatch to approximately 10 weeks of age. Finisher - from approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age). Laying - from time first egg is laid throughout the time of egg production. Breeders - chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their reproductive cycle

b. Broilers - chickens that are grown for human food. Starting/growing - from day of hatch to approximately 5 weeks of age. Finisher - from approximately 5 weeks of age to market (42- to 52 days). Breeders - hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.

c. Broilers, Breeders - chickens whose offspring are grown for human food (broilers). Starting/growing - from day of hatch until approximately 10 weeks of age. Finishing - from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age. Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

d. Starting/growing - Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females)and 16 weeks of age (males). Finisher - Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight). Laying - Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs. Breeder - Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

Guaranteed analysis: Poultry complete feeds and supplements. (all animal classes): Minimum percentage of crude protein, lysine, methionine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

3. Beef cattle formula feeds: Animal classes; calves, birth

to weaning. Cattle on Pasture (may be specific as to reproduction stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.)

a. Guaranteed analysis; Beef complete feeds and supplements, (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of potassium. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis; Beef mineral feeds (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum copper, selenium, and zinc in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A in International Units per pound.

4. Dairy formula feeds: Animal classes; Veal milk replacer - milk replacer to be fed for veal production. Herd milk replacer - milk replacer to be fed for herd replacement calves. Starter - approximately 3 days to 3 months. Growing heifers, bull, and dairy beef, (a.) grower 1 - 3 months to 12 months of age, (b) grower 2 - more than 12 months of age. Lactating dairy cattle. Non-lactating dairy cattle.

a. Guaranteed analysis; Veal and herd replacement milk replacer. Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis: Dairy cattle complete feeds and supplements; Minimum percentage of crude protein. Maximum percentage of non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Maximum percentage of acid detergent fiber (ADF). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum selenium in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound

c. Guaranteed analysis: Dairy mixing and pasture mineral with vitamins (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum selenium in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound.

5. Equine formula feeds: Animal classes; Foal, Mare, Breeding, Maintenance. Guaranteed analysis; Equine complete feeds and supplements (all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum copper, selenium and zinc in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound (if added). Guaranteed analysis for Equine Mineral Feeds (all animal classes). Minimum and maximum percentage of calcium, minimum percentage of phosphorus, minimum and maximum percentage of salt (if added), minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee. Minimum copper, selenium and zinc in parts per million (ppm), minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added)

6. Goat and Sheep formula feeds: Animal classes; starter, grower, finisher, breeder, lactating. Guaranteed analysis; Goat and Sheep complete feeds and supplements (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum and maximum copper in parts per million (PPM) (if added, or if total copper exceeds 20 ppm). Minimum selenium in parts per million (ppm). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

7. Duck and Geese formula feeds: Animal classes; Ducks, starter - 0 to 3 weeks of age, grower - 3 to 6 weeks of age, finisher - 6 weeks to market, breeder/developer- 8 to 19 weeks of age, breeder-22 weeks to end of lay. Geese, starter-0 to 4 weeks of age, grower-4 to 8 weeks of age, finisher-8 weeks to market, breeder/developer-10 to 22 weeks of age, breeder-22 weeks to end of lay. Guaranteed analysis: duck and geese complete feeds and supplements (for all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

8. Fish complete feeds and supplements. Animal species shall be declared in lieu of animal class; trout, catfish, and other species. Guaranteed analysis: fish complete feeds and supplements; Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum percentage of phosphorus.

9. Rabbit complete feeds and supplements. Animal classes, grower-4 to 12 weeks of age, breeder-12 weeks of age and over. Guaranteed analysis, Rabbit complete feeds and supplements(all animal classes). Minimum percentage of crude protein and crude fat. Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and

maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

10. Other feeds shall include the following items in the order listed (unless exempted). The required guarantees of grain mixtures with or without molasses and feeds other than those described shall include the following items, unless exempted and in the order listed: Animal class(es) and species for which the product is intended. Guaranteed analysis; Minimum percentage of crude protein. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minerals in formula feeds, to include in the following order. Minimum and maximum percentages of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee, other mineral.

J. A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

1. The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.

K. No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.

L. Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.

M. When a pet food is enclosed in any outer container or wrapper which is intended for retail sale, all required label information must appear on such outside container or wrapper.

N. The words "Dog Food," "Cat Food," or similar designations must appear conspicuously upon the principal display panels of the pet food labels.

O. The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof is or meets the requisites of a complete, perfect scientific or balanced ration for dogs or cats unless such product or feeding:

1. Contains ingredients in quantities sufficient to provide the estimated nutrient requirements for all stages of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences or,

2. Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment will provide satisfactorily for fertility of females, gestation and lactation, normal growth from weaning to maturity without supplementary feeding, and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.

P. Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representations that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only:

1. In conjunction with a statement of a limited purpose for which the product is intended or suitable (as, for example, in the statement 'a complete food for puppies'). Such representations and such required qualification therefore shall be juxtaposed on the same panel and in the same size, style and color print; and

2. Such qualified representations may appear on pet food labels only if:

a. The pet food contains ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences for such limited or qualified purpose; or

b. The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.

Q. Except as specified by Section R68-2-6, the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, and if the names of more than one such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

R68-2-5. Customer-Formula Feed Labeling.

A. Customer-formula feed shall be accompanied with the following prescribed information shown on label, invoice, delivery ticket, or other shipping document:

1. The name and address of the manufacturer.

2. The name and address of the purchaser.

3. The date of sale or delivery.

4. The customer-formula feed name and brand name if any.

5. The product name and net weight of each registered commercial feed and each other ingredient used in the mixture.

6. If a drug-containing product is used:

a. The purpose of the medication (claim statement).

b. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with Section R68-2-7.

c. The directions for use and precautionary statements as required by Section R68-2-9.

R68-2-6. Brand and Product Names.

A. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose.

B. Commercial, registered brand or trade names are not permitted in guarantees of ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

C. The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

D. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

E. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

F. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Commissioner designates otherwise.

G. The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Section R68-2-7.

H. The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

I. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.

J. No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized test method, or is one, the presence of which, provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of its flavor. The word flavor shall be printed in the same size type and with an equal degree of conspicuousness as the ingredient term(s) from which the flavor designation is derived. Distribution of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the appropriate control official.

K. The designation "100%" or "All" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

L. The name of the pet food shall not be derived from one or more ingredients of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by Subsections R68-2-6-J, M or N; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

1. the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

2. it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; or

3. it is not otherwise false or misleading.

M. When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes 95% or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of the pet food; provided, that where more than one ingredient is part of such product name, then all such ingredient names shall be in the same size, style and color print.

N. When an ingredient or a combination of ingredients derived from animals, poultry or fish constitutes at least 25% but less than 95% of the total weight of all ingredients of a pet food mixture the name or names of such ingredient or ingredients may form a part of the product name of the pet food only if the product name also includes a primary descriptive term such as "meatballs" or "fishcakes" so that the product name describes the contents of the products in accordance with an established law, custom or usage or so that the product name is not misleading. All such ingredient names and the primary descriptive term shall be in the same size, style and color print.

O. Contractions or coined names referring to ingredients shall not be used in the name of a pet food unless it is in compliance with Subsections R68-2-6-J, L, M and N.

R68-2-7. Expression of Guarantees.

A. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees, (when required) will be in terms of percentage.

B. Commercial feeds containing 6 1/2% or more Calcium, Phosphorus, Sodium and Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

1. When the minimum is 5.0% the maximum shall not exceed the minimum by more than one percentage point.

2. When the minimum is above 5.0% the maximum shall not exceed the minimum by more than 5 percentage points.

C. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that:

1. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound.

2. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound.

3. Vitamin D for other uses shall be stated in International or USP units per pound.

4. Vitamin E shall be stated in International or USP Units per pound.

5. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine, Hydrochloride, Choline Chloride, Thiamine, and d-Panto-thenic Acid.

6. Oils and premixes containing vitamin D or both may be labeled to show vitamin content in terms of units per gram.

D. Guarantees for drugs shall be stated in terms of percent by weight.

1. Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

2. Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

3. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulation for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

4. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

1. For ruminants.

a. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, (%)

(This includes not more than (%) equivalent protein from non-protein nitrogen).

b. Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, (%)

c. Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum, (%)

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, (%)

2. For non-ruminants.

a. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude Protein, minimum (%)

(This includes not more than (%) equivalent crude protein which is not nutritionally available to species of animal for which feed is intended.)

b. Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein with adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

F. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

G. or the purpose of determining compliance with this act, a commercial feed shall be deemed in violation if an analysis shows one or more ingredients varies from the guarantee in an amount exceeding the permitted analytical variations (PAV) published by the Association of American Feed Control Officials.

R68-2-8. Ingredients.

A. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of American Feed Control Officials, the common or usual name, or one approved by the Commissioner. Failure to list the ingredients of a pet food in descending order by their predominance by weight in non-quantitative terms may be misleading.

B. The name of each ingredient must be shown in letters or type of the same size.

C. No references to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

D. The term "dehydrated" may precede the name of any product that has been artificially dried.

E. A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

F. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

G. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.0007% iodine, uniformly distributed.

R68-2-9. Directions for Use and Precautionary Statements.

A. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

1. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles: and,

2. Include, but not be limited to, all information described by all applicable rules under the Federal Food, Drug and Cosmetic Act.

B. Adequate directions for use and precautionary

statements are required for feeds containing non-protein nitrogen as specified in Section R68-2-9.

C. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

R68-2-10. Non-Protein Nitrogen.

A. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for reminant animal as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be read and understood by ordinary persons under customary conditions of purchase and use.

B. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrient as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

R68-2-11. Drug and Feed Additives.

A. Prior to approval of a registration application and/or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

B. Satisfactory evidence of safety and efficacy of a commercial feed may be:

1. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable rule in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use, or

2. When the commercial feed is itself a drug as defined in Section 4-12-2 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C., 360 (b).

R68-2-12. Adulterants.

A. For the purpose of Section 4-12-2, the terms "poisonous or deleterious substances" include but are not limited to the following:

1. Fluorine and any mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine and 0.60% for poultry.

2. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration above the following amounts: 0.004% for breeding and dairy cattle: 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry.

3. Soybean meal, flakes or pellets or other vegetable meal, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

4. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of B_1 (Thiamine).

5. Aflatoxin content of any feed ingredient which exceeds 20 parts per billion and/or any quantity established by Federal Statutes or Guidelines.

B. A commercial feed shall be deemed to be adulterated if it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules for medicated feeds and for medicated premixes as published in the Code of Federal Regulations, Title 21, Parts 225 and 226 Sections 225.1-225.115 and 226.1-226.115, respectively.

C. All screenings or by-products of grain and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer shall be ground fine enough or other wise treated to destroy the viability of such weed seeds so that the finished product contains no more than six viable prohibited noxious weed seeds per pound.

KEY: feed contamination
December 16, 1997 4-12-3
Notice of Continuation January 16, 2001

R68. Agriculture and Food, Plant Industry.
R68-6. Utah Nursery Act.
R68-6-1. Authority.

Promulgated under authority of Section 4-15-3.

R68-6-2. Terms Defined.

All terms used in these rules shall have the meaning set forth for such items in the Act.

R68-6-3. Labeling.

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

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

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

D. All roses shall be labeled by grade for individual plants, bundles, or single lots.

R68-6-4. Condition of Nursery Stock.

A. Any nursery stock which, in the judgment of the Commissioner or his authorized agents, does not meet the following minimum indices of vitality shall be removed from sale.

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

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

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

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

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

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

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

R68-6-5. Standards for Nursery Stock.

A. Nursery stock offered for sale in Utah shall meet the grade and size standards as set forth herein.

1. Deciduous Trees.

a. Caliper Measurements. Caliper shall be the determining measurement in grading. Caliper of the trunk shall be taken 6 inches above the ground level up to and including 4 inch caliper size and 12 inches above the ground level for larger sizes.

b. Height Measurements. Height shall be given in single foot units up to 6 feet; example 5-6 feet over 6 feet height shall be given in double foot units; example; 6-8 feet, 12-14 feet.

2. Deciduous Shrubs.

a. Height Measurement.

(1) Dwarf and Semi-dwarf Shrubs: State height in inches up to 24 inches; usually in 3 inch series; examples: 3-6 inches; 6-9 inches Larger than 24 inches state height in feet with 1/2 foot series; example 2 to 2-1/2 feet, 2-1/2 to 3 feet.

(2) Strong Growing Shrubs: State height in 6 inch series up to 24 inches; example: 12-18 inches; over 24 inches by single feet up to 6 feet; then in double feet above 6 feet; example: 8-10 feet.

3. Coniferous Evergreens.

a. Spreading Types.

(1) Measurement designates spread (height not considered). Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to four feet. Use 1 foot intervals from 4 feet up.

(2) Measurement should be average of plant and not the greatest diameter. Plants properly trimmed and transplanted should measure the same in any direction. If a plant is uneven, for example 15 inches the widest way and 9 the narrowest, it should be classified as 12 inch stock.

b. Semi-Spreading Type.

(1) Measurement designates spread. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 4 feet. Use 1 foot intervals from 4 feet up.

(2) Measurement should be average as in Spreading Type. Height of first-class material will be at least one-half of the spread. Above 3 feet, the height will be less than spread, varying somewhat according to natural growth of the particular species and method of handling.

c. Globe or Dwarf Type.

(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 4 feet. Use 1 foot intervals from 4 feet up.

(2) Spread will usually be equal to height in well grown material up to twelve inches. From thereon, there will be a variation of spread to height depending on the variety.

d. Cone Type.

(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 5 feet. Use 1 foot intervals from 5 to 8 feet. Use 2 foot intervals from 8 feet up.

(2) The ratio of height to spread of properly grown material should not be less than 4 to 2-1/2.

e. Broad Upright Type.

(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 5 feet. Use 1 foot intervals from 5 to 8 feet. Use 2 foot intervals from 8 feet up.

(2) This group includes all the broader, upright growing evergreens which develop a straight sided form with many upright branches or "leaders."

(3) The ratio of height to spread of properly grown material should not be less than 4 to 2.

f. Columnar Type.

(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 5 feet. Use 1 foot intervals from 5 feet to 8 feet. Use 2 foot intervals from 8 feet up.

(2) This group includes all the upright growing evergreens which naturally develop a straight-sided form or one that tapers only slightly from the ground to a point more than half the height.

(3) The broader types will usually have a ratio of height to spread of 4 to 1. Many forms, however, will not attain this ratio and even those of broad habit may be trimmed to advantage into a narrowed form. However, in most cases the ratio of height to spread should not be less than 5 to 1, except with certain specialty types which characteristically grow more narrow.

4. Broadleaf Evergreens.

a. Measurement of height should be where the branches start, and not at the ground, if the plant is leggy. It should stop where the main part of the plant ends, and not to the tip of a thin shoot.

(1) Spreading Type.

Measurement designates spread (height not considered). Use 3 inch intervals up to 24 inches. Use 6 inch intervals from 24 inches to 4 feet. Use 1 foot intervals over 4 feet.

(2) Semi-Spreading Type.

Measurement designates spread (height not considered). Use 3 inch intervals up to 24 inches. Use 6 inch intervals from 24 inches to 4 feet. Use 1 foot intervals over 4 feet.

(3) Globe or Dwarf Type.

(a) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 4 feet. Use 1 foot intervals from 4 feet up.

(b) Spread will usually be equal to or only slightly less than the height, but in no case will the ratio be more than 2 to 1 or height more than twice spread.

(4) Broad Upright Type.

(a) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 3 feet. Use 1 foot intervals from 3 feet up.

(b) This group includes all of the larger growing upright broadleaves which vary considerably in ratio of spread to height. Well-grown material will in most cases have a height equal to if not greater than the spread. However, the spread should not be less than two thirds of the height.

(5) Cone Type.

(a) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 3 feet. Use 1 foot intervals from 3 feet up.

(b) This type includes all upright growing broadleaf evergreens which naturally develop into a conical form. Well-grown material will have a ratio of height to spread of 3 to 1. A greater spread is acceptable.

5. Rose Grades.

a. The standards specified apply only to field-grown two-year roses when sold either bare-root, individually wrapped and packaged, or in containers. All grades of roses must have a well-developed root system and have proportionate weight and caliper according to grade and variety. Roses shall be graded by size, number and length of canes, and proper consideration should be given to weight and caliper of canes, depending upon grade and variety. The specifications outlined for length of canes are applicable before pruning in preparation for sale. If the cut-back is less than the length specified for various approved grades, then the grade shall be determined by caliper of the cane. Packaged roses shall have a minimum cane length of 8 inches and shall comply with the caliper requirements for the various approved grades. Roses offered for sale in containers may be cut back to a minimum of 4 inches above the bud union at the time they are potted, and still comply with the grade in which they were classified prior to pruning in preparation for potting.

(1) Hybrid Tea, Tea, Grandiflora, Hybrid Perpetual, Moss and Miscellaneous Bush Roses.

(a) Grade No. 1. Three or more strong canes, two of which are to be 16 inches and up, and one cane to be 18 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/8 inch.

(b) Grade No. 1-1/2. Two or more strong canes, to be 13 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 5/16 inch.

(c) Grade No. 2. Two or more strong canes 10 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified length shall be 1/4 inch.

(2) Floribunda Roses.

(a) Grade No. 1. Three or more strong canes, two of which are to be 15 inches and up, branches not higher than 3

inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 5/16 inch.

(b) Grade No. 1-1/2. Two or more strong canes to be 14 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 1/4 inch.

(c) Grade No. 2. Two or more strong canes to be 12 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/16 inch.

(3) Polyantha, Dwarf, and Light Growing Floribunda Roses.

(a) Grade No. 1. Four or more canes, all to be 12 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 1/4 inch.

(b) Grade No. 1-1/2. Three or more canes, all to be 10 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/16 inch.

(c) Grade No. 2. Two or more strong canes, both to be 10 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 1/8 inch.

(4) Climbing Roses.

(a) Grade No. 1. Three or more strong canes, 24 inches and up with the exception of Wichuraiana and Wichuraiana types, which are to have 4 strong canes each 24 inches and up, branched not higher than 3 inches above the bud union or crown. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 7/16 inch.

(b) Grade No. 1-1/2. Two strong canes, each 18 inches and up with the exception of Wichuraiana and Wichuraiana types which are to have 3 strong canes 18 inches and up, branched not higher than 3 inches above the bud union or crown. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/8 inch.

(c) Grade No. 2. Two strong canes, each 14 inches and up, with the exception of Wichuraiana and Wichuraiana types which are to have 3 strong canes 16 inches and up, branched not higher than 3 inches above the bud union or crown. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 5/16 inch.

6. Vines and Ground Covers.

a. Fast Growing Vines.

(1) Two-year No. 1. Shall have heavy, well-branched tops with not less than 3 runners 18 inches and up and vigorous, well-developed root system.

(2) Two-year No. 2. Lighter grade below No. 1 standard but without defects, 3 runners 12 inches and up and a root system commensurate with the top.

b. Medium Growing Vines.

(1) Two-year No. 1. Shall have a heavy, well-branched top and vigorous, well-developed root system.

(2) Two-year Medium Lighter grade than No. 1. Without serious defects, top not as well branched. Root system must be in proportion to top.

c. Clump Type.

(1) Clump type shall be designated by age and heavy or light grade. Dormant plants may or may not have live runners. They shall have a well-developed root system and healthy well-developed crown.

d. Ground Covers.

(1) Dwarf Vines and Ground Cover are to be designated or described by age, size of clump and length of runners and other characteristics peculiar to the particular species offered.

KEY: nurseries (agricultural)
1987 4-15-3
Notice of Continuation January 16, 2001

R68. Agriculture and Food, Plant Industry.

R68-10. Quarantine Pertaining to the European Corn Borer.

R68-10-1. Authority.

A. Promulgated under authority of 4-2-2.

B. The fact has been determined by the Utah Commissioner of Agriculture and Food that a serious insect pest known as the European Corn Borer (Pyrausta nubilalis), not known to exist in the State of Utah, exists in the described infested areas, and the restricted products described are hosts or possible carriers of pests.

C. The Commissioner, by virtue of the authority in him vested by 4-2-2, does establish a quarantine setting forth the name of the pest against which the quarantine is established, the infested area, the products regulated, and specifying conditions governing shipments and issuance of certificates under which products may be shipped.

R68-10-2. Pest.

European Corn Borer (Pyrausta nubilalis)

R68-10-3. Areas Under Quarantine.

All States and Districts of the United States except the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington.

R68-10-4. Infested Areas.

Entire States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

R68-10-5. Commodities Covered.

Restricted Products: Corn, broomcorn, sorghums, and sudangrass plants and all parts thereof, including seed and shelled grain, and stalks, ears, sweet corn on the cob, and all other parts (except seed for planting purposes and popcorn for human consumption when free from portions of plants or fragments capable of harboring larvae of European Corn Borer); beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems), are hereby declared to be hosts or possible carriers of the pest herein quarantined against.

R68-10-6. Restrictions.

A. Definitions. As used in this section, the following words and terms shall be construed respectively to mean:

1. "Portions of plants or fragments capable of harboring larvae of European Corn Borer" - Any portion of a host plant of any shape or size which cannot be passed through a 1/2 inch square aperture, and any completely whole, round uncrushed section, portion, or piece of cob, stalk, or stem of one-inch or more in length and 3/16-inch or more in diameter.

2. "Official Certificate" - a document, issued by a duly authorized representative of the designated State Department of Agriculture and Food evidencing compliance with the provisions of this rule and setting forth all information and facts hereinafter required.

B. Certification is required on all shelled grain from areas under quarantine. Except as provided in paragraph E. below, each lot or shipment of shelled corn, broomcorn, sorghums and sudangrass grown in or shipped from the area under quarantine described in section 2. imported or brought into this state shall be accompanied by an official certificate evidencing compliance with one of the following conditions:

1. Certificates on shelled grain grown in or shipped from the infested area, must either affirm that said grain has been passed through a 1/2-inch mesh screen or less and is believed to be free from stalks, cobs, stems, or portions of plants or fragments capable of harboring larvae of the European Corn Borer, and further, that the car or truck was free from stalks, cobs, stems, or such portions of plants or fragments at the time of loading; or, affirm that said grain has been fumigated by a method and in a manner prescribed by the Utah Department of Agriculture and Food, and setting forth the date of fumigation, dosage schedule, and kind of fumigant used.

2. Certificates for shelled grain grown in and shipped from non-infested states under quarantine must be issued by the proper official of the state wherein such grain was produced, affirming that all such grain covered by said certificate is a product of said state wherein no European Corn Borer is known to exist and that its continued identity has been maintained to assure no blending or mixing with grain, plants, or portions thereof produced in or shipped from an infested area.

C. Any lot or shipment of shelled grain arriving in this state which is not accompanied by an official certificate as hereinbefore required, or which is certified on the basis of freedom from contamination with portions of plants or fragments capable of harboring larvae of European Corn Borer as defined above and which is found to be so contaminated, shall be deemed to be in violation of this quarantine.

D. All certificates issued in compliance with this quarantine shall also set forth the kind and quantity of the commodity constituting the lot or shipment covered thereby, the initials and number of the railway car or license number in the case of a truck, and the names and addresses of the shipper and consignee.

E. Small lots and packages of seed may be admitted without a certificate. Individual shipments or lots of one hundred pounds or less of clean shelled grain and seed covered by this quarantine, or comprised of packages of less than ten pounds, are hereby exempted from the certification requirements and will be admitted into this state subject to inspection and freedom from portions of plants or fragments capable of harboring European Corn Borer.

F. Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and sudangrass may be admitted under a fumigation treatment certificate. Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and sudangrass grown in or shipped from the area under

quarantine imported as such or as packing or otherwise, will be admitted into the State of Utah only provided each lot or shipment is accompanied by an official certificate of the state of origin, affirming that all stalks, ears, cobs, or other parts, fragments, or debris of such plants accompanied thereby have been fumigated by a method and in a manner prescribed by the Commissioner, and setting forth the date and full particulars of the treatment applied; except, that stalks, ears, cobs, or other parts, fragments, or debris of said plants grown in and shipped from states under quarantine not listed in the infested area will be admitted into the State of Utah, provided each shipment or lot is accompanied by an official certificate of the state where produced, affirming that such product is a product of said state wherein no European Corn Borer is known to exist and that continued identity of the product has been maintained to assure no handling or storage in association with stalks, ears, cobs, or other parts, fragments, or debris of such plants grown in or shipped from infested areas herein described. All certificates issued in compliance with this paragraph must also set forth the kind and quantity of the commodity constituting the lot or shipment covered thereby, the initials and number of the railway car or license number in the case of a truck, and the names and addresses of the shipper and consignee.

G. Certification is required on certain vegetable and ornamental plants and plant products produced in or shipped from an infested area. Except as provided in paragraph h. below, beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems) produced in or shipped from the infested area will be admitted into the State of Utah, provided each lot or shipment is officially certified by a duly authorized official of the state where produced, evidencing that such plants, products, or cut flowers have been inspected or that the greenhouse or growing grounds where same were produced were inspected and no European Corn Borer was found, or that such plants, products, or cut flowers have been fumigated by a method and in a manner prescribed by the Utah Department of Agriculture and Food and setting forth the date of fumigation, dosage schedule, and kind of fumigant used. No restrictions are placed by this quarantine on the entry into Utah of such vegetable and ornamental plants and plant products produced in and shipped from any non-infested state.

H. Certain restricted products are conditionally exempt from certification. Certification requirements of paragraph G. above are hereby waived on individual shipments or lots of certain restricted vegetable, ornamental plants, and plant products described therein, under and subject to the following conditions:

1. In lots of shipments of ten (10) pounds or less--beans in the pod, beets, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots).

2. During period of November 30th to May 1st - divisions without stems of the previous year's growth, rooted cuttings, seedling plants and cut flowers of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, and Japanese Hop.

I. Manufactured or processed products are exempt from restriction. No restrictions are placed by this quarantine upon the movement of the restricted products herein defined which are processed or manufactured in such a manner as to eliminate all danger of carrying the pest herein quarantined against.

R68-10-7. Enforcing Powers.

A. Authorized agents of the Utah Department of Agriculture and Food shall refuse admittance into the State of Utah any quarantined products that do not meet the provisions of this quarantine.

B. Any shipment found within Utah in violation of this quarantine shall be treated to comply with this quarantine or be returned to the shipper at once. In either case, the shipper shall stand the expense incurred.

R68-10-8. Approved Fumigation Treatment for European Corn Borer Bulk Shelled Grain (corn, broomcorn, sorghum and sudangrass in railway cars or trucks).

Atmospheric fumigation for a period of 16 hours using methyl bromide at the following rates to be determined by the temperature of the product and interior of the car during the period of exposure.

TABLE

TEMPERATURE	LBS. PER 1,000 CU. FT.	
60 degrees F. and above	4	
55-59 degrees F.	4.5	
50-54 degrees F.	5	
45-49 degrees F.	5.5	
40-44 degrees F.	6	
35-39 degrees F.	6.5	(Hot gas method of
30-34 degrees F.	7	application must be
25-29 degrees F.	7.5	used at temperatures
20-24 degrees F. (minimum)	8	below 40 degrees F.)

R68-10-9. Requirements During Fumigation.

A. Truck and railway cars being used as fumigating chambers must be sealed in a manner to make them gas-tight.

B. Blowers shall be provided to circulate the gas throughout the space being fumigated.

C. When fumigation takes place below 40 degrees F., a hot gas method of fumigation must be used.

CAUTION: Methyl bromide (CH_3Br) is a colorless, odorless, volatile liquid which when released at ordinary temperatures is a gas injurious to all forms of animal life. Proper precautions should be observed by all persons when handling it. Contact the Utah Department of Agriculture and Food for further information.

KEY: plant diseases
1987 **4-2-2**
Notice of Continuation January 16, 2001

R68. Agriculture and Food, Plant Industry.
R68-12. Quarantine Pertaining to Mint Wilt.
R68-12-1. Authority.

A. Promulgated under authority of 4-2-2.

B. It has been determined that the disease known as Mint Wilt caused by the organism Verticillium Albo-atrum R and B or Verticillium dahliae is injurious to peppermint and spearmint, resulting in drastically lowered oil production in areas of severe infection; and

C. restricting the movement of rootstocks in other states has been effective in retarding the spread of the disease to new areas of production, and in making growers aware of the necessity of better sanitary and cultural practices; and

D. the strain of Verticillium wilt known to infect mint is not known to be present in the State of Utah:

E. The Commissioner of Agriculture and Food of the State of Utah, by virtue of the authority vested in him by the provisions of 4-2-2 establishes a quarantine in order to prevent the introduction and subsequent spread of the Verticillium wilt disease of mint into and within the State of Utah, setting forth:

1. quarantined areas;
2. restricted areas;
3. regulated articles;
4. conditions governing movement, and
5. required in-state certification of mint.

R68-12-2. Definitions.

For the purpose of this quarantine, the following terms are defined:

A. "Department" means the Utah Department of Agriculture and Food.

B. "Disease organism" means Verticillium Albo-atrum R and B or Verticillium dahliae varieties capable of causing wilt of mint.

C. "Mint" means any plant or part thereof of the genus Mentha.

D. "Mint planting stock" includes any portion of the mint used for reproduction and/or propagation.

E. "Certified mint planting stock" means mint planting stock carrying a sealed certification tag or a certificate provided by the official certification agency of the state of origin.

R68-12-3. Quarantined Areas.

All areas outside the State of Utah.

R68-12-4. Restricted Areas.

All areas within the State of Utah.

R68-12-5. Regulated Articles.

All mint planting stock.

R68-12-6. Prohibited Articles.

All mint planting stocks which are not certified by the official certification agency of the state of origin.

R68-12-7. Conditions Governing Movement.

A. Entry into State. No person shall import or move in any manner into the State of Utah any mint unless it carries a sealed certification tag or a certificate issued by the official agency of the state of origin. Any imported mint not meeting this requirement shall be returned to the point of origin or destroyed at the option and expense of the importer.

B. Movement within State. No mint planting stock shall be moved within the State of Utah unless it carries a sealed certification tag or a certificate issued by the official certification agency of the state of Utah.

R68-12-8. Certification Required Within State.

All mint planting stock imported into the State of Utah shall be placed under the certification program of the Utah Crop Improvement Association and shall comply with the certification requirements and standards as established by that agency. All mint plantings in Utah must be maintained under certification or destroyed. If the Department finds any mint within the State of Utah infested with the wilt disease organism, it shall require the destruction of the same.

R68-12-9. Waiver of Liability.

Any shipment of mint planting stock found within the State of Utah in violation of this quarantine must, under the immediate supervision of the State Department of Agriculture and Food, be destroyed or returned to the shipper at once. In either case, the shipper shall stand the expense of disposition of such shipment and the State of Utah assumes no liability for costs associated therewith. Any violation of these orders will be dealt with according to law.

KEY: plant diseases
1987 **4-2-2**
Notice of Continuation January 16, 2001

R70. Agriculture and Food, Regulatory Services.
R70-610. Uniform Retail Wheat Standards of Identity.
R70-610-1. Authority.

Promulgated under Sections 4-5-6, 4-2-2, and 4-5-17.

R70-610-2. Definitions.

A. "Field Wheat" shall mean the grain of common wheat, club wheat, and durum wheat which before the removal of inert and foreign material (dockage) consists of 50 percent of one of these wheats and not more than 10 percent of other grains for which standards have been established by the United States Grain Standards Act and which, after removal of inert and foreign material contains 50 percent or more of whole kernels of one or more of these wheats.

B. "Rough Cleaned Wheat" shall mean field wheat which has been cleaned and contains not more than 2.0 percent inert and foreign material, not more than 5.0 percent shrunken and broken kernels and no poisonous or deleterious substance or other material that would render wheat unwholesome or harmful to health.

C. "Cleaned Wheat" shall mean field wheat which has been cleaned and contains not more than 1.0 percent inert and foreign material, not more than 5.0 percent shrunken and broken kernels and no poisonous or deleterious substance or other material that would render wheat unwholesome or harmful to health.

D. "Table Cleaned Wheat" shall mean field wheat which has been cleaned and contains not more than .5 percent inert and foreign material, not more than 5.0 percent shrunken and broken kernels and no poisonous or deleterious substance or other material that would render wheat unwholesome or harmful to health.

E. "Hard Red Winter Wheat" shall mean all subclasses and varieties of hard red winter wheat with not more than 3 percent other classes of wheat.

F. "Hard Winter Wheat" shall mean all subclasses and varieties of hard red and white winter wheats with not more than 3 percent other classes of wheat.

G. "Hard Red Spring Wheat" shall mean all subclasses and varieties of hard red spring wheat with not more than 3 percent other classes of wheat.

H. "Soft Red Winter Wheat" shall mean all subclasses and varieties of soft red winter wheat, with not more than 3 percent other classes of wheat.

I. "Hard Red Wheat or Hard Red Wheat Blend" shall mean blended wheat of all subclasses and varieties of hard red winter wheat and hard red spring wheat, with not more than 3 percent other classes.

J. "Wheat Mix" shall mean all subclasses and varieties of hard red winter wheat and hard red spring wheat mixed with soft wheats.

K. "White Wheat" shall mean all subclasses and varieties of white wheat with not more than 3 percent other classes of wheat.

L. "Hard Red and White Wheat Blend" shall mean all subclasses and varieties of hard red wheat mixed with any subclass and variety of hard white wheat.

M. "Damaged Kernels" shall mean kernels and pieces of kernels of wheat which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, moldy, diseased, or otherwise materially damaged.

N. "Inert and Foreign Material or Dockage" shall mean all weed seeds, weed stems, shaff, straw, grain other than wheat, sand, dirt, dead insects or any other material that can be readily removed from wheat by the use of sieves and cleaning devices.

O. "Poisonous or Deleterious Substances" shall mean all smuts, ergots, poisonous weed seeds, pesticides, live insects, rodent excreta, or other material or substances that would render wheat unwholesome or harmful to health.

P. "Adulteration" shall be defined as outlined in the Utah Wholesome Food Act, Section 4-5-7.

Q. "Misbranded" shall be defined as outlined in the Utah Wholesome Food Act, Section 4-5-8.

R. "Shrunken and Broken Kernels" shall mean all kernels and pieces of kernels of wheat and other matter that will readily pass through a 0.064 x 3/8 oblong hole sieve.

S. "F.P.L.A." shall mean the Fair Packaging and Labeling Act.

R70-610-3. Labeling.

Packaged wheat that is intended for sale directly to consumers and not intended for further processing, labeling, or repackaging in a food processing establishment must be labeled according to 21 USC 343, known as F.P.L.A., the Nutrition Labeling and Education Act of 1990.

R70-610-4. Special Labeling Standards for Wheat.

Wheat that is intended for sale directly to consumers and not intended for processing, labeling, or repacking in a food processing establishment must be labeled in addition to F.P.L.A. labeling with

A. Class of Wheat, i.e., hard red winter wheat, hard winter wheat, hard red spring wheat, hard spring wheat, soft red winter wheat, white wheat, hard red wheat or hard red blend wheat mix, and hard red and white wheat blend.

B. The type of Cleaning Standard Met, i.e. field wheat (no cleaning), rough cleaned wheat, cleaned wheat, or table cleaned wheat.

R70-610-5. General.

A. If the wheat contains less than 11 percent moisture, it may be labeled low moisture wheat.

B. If the germination of the wheat is 85 percent or more, the term "germination not impaired" may be used.

C. All claims made on the label must be met by the processor.

D. Wheat must be processed, packaged, and stored in such a manner that the product will not become adulterated.

E. Wheat cleaning facilities and products must be in compliance with Title 4, Chapter 5 and R70-530.

KEY: food inspection

1987	**4-5-6**
Notice of Continuation January 16, 2001	**4-5-17**
	4-2-2

R70. Agriculture and Food, Regulatory Services.
R70-620. Enrichment of Flour and Cereal Products.
R70-620-1. Authority.

A. Promulgated under authority of 4-6-3.

B. The Utah Department of Agriculture and Food adopts and incorporates by reference the Code of Federal Regulations, April 1, 1996 edition Title 21, parts 137 and 139, as its enrichment standards and labeling requirements governing the identity and quantity of vitamins and minerals to be added to flour and cereal manufactured or sold in Utah.

R70-620-2. Enrichment Standards.

The following flour and cereal products have identity and enrichment standards as prescribed in 21 CFR parts 137 and 139.

A. Enrichment standards for flour and cereals produced from small grain and corn include enriched bromated flour, enriched self-rising flour, instantized - instant blending and quick-making forms of the same, enriched farina, enriched cornmeals, enriched corn grits and enriched rice.

B. Food products containing 25 percent or more of flour produced from small grain and corn include enriched white bread and rolls, enriched macaroni products, enriched noodle products, enriched vegetable macaroni products, enriched vegetable noodle products, enriched macaroni products made with non-fat milk, and enriched macaroni products with fortified protein.

R70-620-3. Labeling.

A. The flour and cereal products listed in R70-620-2A and B in the above enrichment standard shall be labeled in accordance with the Code of Federal Regulation Title 21, definitions and standards of identity.

B. The unenriched counterpart of the flour and cereal products listed in R70-620-2A of the above enrichment standards may be sold at retail in Utah only if there is prominently shown on the principle display panel the word "unenriched" in type no smaller than one-half the height of the name of the product on the principle display panel.

R70-620-4. Certificate.

A. Any flour sold to a distributor or processor must be certified, assuring the seller that the flour or any flour or cereal product derived from the flour when offered for retail sale will conform to the enrichment standards and labeling requirements.

B. The required certificate shall be in the following form:

Date

The following flour is unenriched. I hereby certify that the final product made from this flour will meet the enrichment standards prescribed for flour.

Signature and Title of Distributor or Processor

Address of Distributor or Processor

KEY: food inspection
February 15, 1997 4-6-3
Notice of Continuation January 16, 2001

R152. Commerce, Consumer Protection.

R152-1. Utah Division of Consumer Protection: "Buyer Beware List".

R152-1-1. Purposes, Policies and Rules of Construction.

A. These rules are promulgated pursuant to Subsection 13-2-5(1) for the purposes of assisting in the orderly administration of those chapters of Title 13, Utah Code Annotated, 1953, as amended, which the Division is charged with administering and enforcing and or assisting other state and federal agencies in administering and enforcing, namely:

(1) Title 13, Chapter 5, Unfair Practices Act;

(2) Title 13, Chapter 10a, Music Licensing Practices Act;

(3) Title 13, Chapter 11, Consumer Sales Practices Act;

(4) Title 13, Chapter 15, Business Opportunity Disclosure Act;

(5) Title 13, Chapter 16, Motor Fuel Marketing Act;

(6) Title 13, Chapter 20, New Motor Vehicle Warranties Act;

(7) Title 13, Chapter 21, Credit Services Organizations Act;

(8) Title 13, Chapter 22, Charitable Solicitations Act;

(9) Title 13, Chapter 23, Health Spa Services Protection Act;

(10) Title 13, Chapter 25a, Telephone and Facsimile Solicitation Act;

(11) Title 13, Chapter 26, Telephone Fraud Prevention Act;

(12) Title 13, Chapter 28, Prize Notices Regulation Act; and

(13) Title 13, Chapter 30, Utah Personal Introduction Services Protection Act.

B. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to general authority of Section 5 of Chapter 2 of Title 13, Utah Code Annotated, 1953, as amended, and specific authority of the following statutory sections, namely Subsections 13-11-8(2), and 13-15-3(1), and Section 13-16-12, Utah Code Annotated, 1953, as amended. Without limiting the scope of any section of any chapter therein or any other rule, this rule shall be liberally construed and applied to promote its stated purposes and policies. The purposes and policies of this rule are to:

(1) protect consumers from individuals and businesses who have engaged in and committed deceptive acts or practices, or have engaged in and committed unconscionable acts or practices.

(2) supply consumers with pertinent information on the nature of those individuals or businesses who may be engaging in and committing deceptive acts or practices, or may be engaging in and committing unconscionable acts or practices, so as to aid consumers in their decision making.

(3) encourage the development of fair consumer sales practices and wise decision making by consumers in all their consumer purchase decisions.

R152-1-2. Definitions.

A. Definitions: For the purposes of this rule, the following definitions shall apply and be used in construing this rule:

(1) "Buyer Beware List" means a written and compiled list of those individuals or business compiled by the Division in accordance with this rule and based on the criterion for placement on and removal from said list set forth herein. Such list shall be a not less than quarterly publication of the Division and for purposes of classification under the Utah Government Records Management Act ("GRAMA") Section 63-2-101, et seq., Utah Code Annotated, 1953 as amended, is classified as a "public" record or document.

(2) "Department" means the Utah Department of Commerce.

(3) "Director" means the director of the Utah Department of Commerce, Division of Consumer Protection.

(4) "Division" means the Utah Department of Commerce, Division of Consumer Protection.

(5) "Emergency" means facts known or presented to the Utah Department of Commerce, Division of Consumer Protection that show that an immediate and significant danger to the public health, safety, or welfare exists as regards the administration of those chapters or one of those chapters of Title 13, Utah Code Annotated, 1953, as amended, which the Division is charged with administering and enforcing; and the threat requires immediate action by the Division.

(6) "Executive Director" means the executive director of the Utah Department of Commerce.

(7) "Order of Adjudication" means an order issued by the Utah Department of Commerce, Division of Consumer Protection after proper notice and hearing, as applicable, in accordance with the Utah Administrative Procedures Act, Section 63-46b-1, et. seq., Utah Code Annotated, 1953, as amended.

R152-1-3. Placement on "Buyer Beware List".

A. The Division shall place the name of an individual or business on the "Buyer Beware List" for the following reason:

(1) Conduct which constitutes a violation of any of the chapters of Title 13, Utah Code Annotated, 1953, as amended, which the Division is charged with administering and enforcing, and which has been reduced to an Order of Adjudication of the Division, namely:

(a) Title 13, Chapter 5, Unfair Practices Act;

(b) Title 13, Chapter 10a, Music Licensing Practices Act;

(c) Title 13, Chapter 11, Consumer Sales Practices Act;

(d) Title 13, Chapter 15, Business Opportunity Disclosure Act;

(e) Title 13, Chapter 16, Motor Fuel Marketing Act;

(f) Title 13, Chapter 20, New Motor Vehicle Warranties Act;

(g) Title 13, Chapter 21, Credit Services Organizations Act;

(h) Title 13, Chapter 22, Charitable Solicitations Act;

(i) Title 13, Chapter 23, Health Spa Services Protection Act;

(j) Title 13, Chapter 25a, Telephone and Facsimile Solicitation Act;

(k) Title 13, Chapter 26, Telephone Fraud Prevention Act;

(l) Title 13, Chapter 28, Prize Notices Regulation Act; and

(m) Title 13, Chapter 30, Utah Personal Introduction Service Protection Act.

(2) The Division shall provide fifteen (15) business days written notice by certified mail prior to placing an individual or

business on the Buyer Beware List unless notice has otherwise been given by a previously issued Division subpoena or written inquiry properly addressed or unless an emergency is deemed to exist. All individuals and businesses placed on the Buyer Beware List shall be notified in writing of the reasons for the proposed inclusion on the list. They will also be advised of what actions, if any, they can take to remove their name from the list.

B. When the Division of Consumer Protection believes the public interest would be served, the Division may place the name of an individual or business on the "Buyer Beware List" for either of the following reasons:

(1) Failure or refusal to respond to an administrative subpoena of the Division; or

(2) Failure or refusal to respond to a consumer complaint on file with the Division alleging violation of one or more of the acts administered by the Division after the business or individual has received notification from the Division and had an opportunity to respond to the Division and address the complaint. Unclaimed, returned or refused certified mail properly addressed to the individual or business which is received back by the Division shall constitute proof of such failure or refusal to respond.

C. Prior to placement on the Buyer Beware List for either of the reasons set forth at R152-1-3B(1) and (2) above the Division shall:

(1) In accordance with Division policy and procedure upon receipt of a consumer complaint make reasonable efforts to communicate with an individual or business complained against which shall include at a minimum efforts of:

(a) At least one (1) initial written notice by certified mail or facsimile transmission;

(b) At least one (1) initial telephone call; and

(c) If the individual or business complained against is a Utah resident at least one initial (1) face to face contact by a Division representative either at the Division's offices or at the individual's or business' Utah address.

(2) If the initial efforts set forth at R152-1-3C(1) have proven unsuccessful the Division shall provide fifteen (15) business days written notice by certified mail prior to placing an individual or business on the Buyer Beware List unless notice has otherwise been given by a previously issued Division subpoena or written inquiry properly addressed or unless an emergency is deemed to exist. All individuals and businesses placed on the Buyer Beware List shall be notified in writing of the reasons for the proposed inclusion on the list. They will also be advised of what actions, if any, they can take to remove their name from the list.

D. Each listing on the Buyer Beware List shall contain a listing of the individual's or business':

(1) name(s), including "doing businesses as";

(2) address(es);

(3) phone number(s); and

(4) a detailed basis for the individual or business being placed on the list, including whether an administrative fine has been assessed and if so what amount and or whether a cease and desist order in accordance with Section 13-2-6(1), Utah Code Annotated, 1953, as amended, has been issued.

R152-1-4. Removal from "Buyer Beware List".

A. The Division of Consumer Protection shall remove the name of the business or individual from the Buyer Beware List as follows:

(1) Pursuant to R152-1-3A(1), when the individual or business complies with all aspects of the Order of Adjudication entered against the individual or business, including the payment of all administrative fines assessed, if any.

(2) Pursuant to R152-1-3B(1), when a sufficient response is provided to an outstanding Division subpoena.

(3) Pursuant to R152-1-3B(2), when a satisfactory response is made to outstanding Division inquiries previously failed or refused to be responded to.

R152-1-5. Enforcement.

A. The Division may be entitled to recover costs, including investigative costs and processing costs incurred in administration of this rule when such are reduced to an Order of Adjudication or otherwise agreed to by the Division and the individual or business.

B. Any payment made to the Division shall be approved by the Executive Director of the Department of Commerce and placed in the Division Consumer Education and Training Fund for the specific purpose of publishing and disseminating the Buyer Beware List.

KEY: consumer protection

April 1, 1996	**13-2-5(1)**
Notice of Continuation January 29, 2001	**13-11-8(2)**
	13-15-3(1)
	13-16-12

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

These rules are known as the General Rules of the Division of Occupational and Professional Licensing.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment.

(3) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(4) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(5) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(6) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(7) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a) and created under Subsection R156-1-404a.

(8) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(9) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(10) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(11) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(12) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

(13) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(14) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(15) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(16) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(6).

(17) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(18) "Probation" means disciplinary action placing terms and conditions upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(19) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(20) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(21) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (19)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(22) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(23) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (19)(a), placed on a license issued to an applicant for licensure.

(24) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or

reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(25) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(26) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(27) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(28) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(30) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

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

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h) and Section 58-1-109, except as otherwise specified in writing by the director, the designation of presiding officers is clarified or established as follows:

(1) The division enforcement counsel is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division enforcement counsel is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Except as otherwise specified in writing by the director, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a request for agency action are as follows:

(a) Director. The director shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i),(k), (l), (o), (q), and (t).

(b) Bureau managers. The bureau manager over the occupation or profession involved shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (j), (p), (r) and (s).

(i) At the direction of the a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the format of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(c) Contested citation hearing officer. The contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(m).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-106(3), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of

the division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

R156-1-204. Board and Committee Meetings Open to Public - Notice of Board Meetings.

(1) Board and committee meetings shall be open to the public except when closed in accordance with Section 52-4-5.

(2) The notice of board and committee meetings required by Section 52-4-6 shall be provided as follows:

(a) Not later than the last working day of January of each year, the division shall publish a list of its anticipated board and committee monthly meeting schedule in the State Bulletin.

(b) Not later than the last working day of each calendar month the division shall post in a prominent and appropriate place within the building occupied by the division, a calendar containing the date, time, and place of all board and committee meetings scheduled for the next succeeding month. In addition, the division shall provide a copy to the media.

(c) Not later than the close of business of the business day preceding a meeting of any board or committee, the division shall post in a prominent and appropriate place within the building occupied by the division, a copy of the agenda for the board or committee meeting.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(7) Unless otherwise approved by the division, peer or advisory committee meetings shall be held in the building occupied by the division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-204(3) through (13).

R156-1-301. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or

instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee who holds an active in good standing license under Title 58 may apply for inactive licensure status.

(2) The following licenses issued under Title 58 may not be placed on inactive licensure status:

(a) Agency performing animal euthanasia;

(b) Analytical laboratory;

(c) Branch pharmacy;

(d) Certified professional accountant firm;

(e) Controlled substance;

(f) Controlled substance precursor distributors and purchasers;

(g) Cosmetologist/barber school;

(h) Employee leasing company;

(i) Funeral service establishment;

(j) Hospital, institutional, nuclear, out-of-state mail service and retail pharmacy;

(k) Licensed substance abuse counselor;

(l) Pharmaceutical manufacturer, researcher, teaching organization, wholesaler or distributor;

(m) Preneed funeral arrangement provider; and

(n) Veterinary pharmaceutical outlet.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

R156-1-308a. Renewal Dates.

The following renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Animal Euthanasia Agency	May 31	odd years
(4)	Alternate Dispute Resolution Provdr	September 30	even years
(5)	Analytical Laboratory	May 31	odd years
(6)	Architect	May 31	even years
(7)	Audiologist	May 31	odd years
(8)	Boxing Licensee	December 31	even years
(9)	Branch Pharmacy	May 31	odd years
(10)	Building Inspector	July 31	odd years
(11)	Burglar Alarm Security	July 31	even years
(12)	C.P.A. Firm	September 30	even years
(13)	Certified Shorthand Reporter	May 31	even years
(14)	Certified Dietitian	September 30	even years
(15)	Certified Nurse Midwife	January 31	even years
(16)	Certified Public Accountant	September 30	even years

(17)	Certified Registered Nurse Anesthetist	January 31	even years
(18)	Certified Social Worker	September 30	even years
(19)	Chiropractic Physician	May 31	even years
(20)	Clinical Social Worker	September 30	even years
(21)	Construction Trades Instructor	July 31	odd years
(22)	Contractor	July 31	odd years
(23)	Controlled Substance Precursor Distributor	May 31	odd years
(24)	Controlled Substance Precursor Purchaser	May 31	odd years
(25)	Cosmetologist/Barber	September 30	odd years
(26)	Cosmetology/Barber School	September 30	odd years
(27)	Deception Detection	July 31	even years
(28)	Dental Hygienist	May 31	even years
(29)	Dentist	May 31	even years
(30)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years
(31)	Electrologist	September 30	odd years
(32)	Environmental Health Scientist	May 31	odd years
(33)	Factory Built Housing Dealer	September 30	even years
(34)	Funeral Service Director	May 31	even years
(35)	Funeral Service Establishment	May 31	even years
(36)	Health Care Assistant	November 30	even years
(37)	Health Facility Administrator	May 31	odd years
(38)	Hearing Instrument Specialist	September 30	even years
(39)	Hospital Pharmacy	May 31	odd years
(40)	Institutional Pharmacy	May 31	odd years
(41)	Landscape Architect	May 31	even years
(42)	Licensed Practical Nurse	January 31	even years
(43)	Licensed Substance Abuse Counselor	May 31	odd years
(44)	Marriage and Family Therapist	September 30	even years
(45)	Massage Apprentice, Therapist	May 31	odd years
(46)	Naturopath/Naturopathic Physician	May 31	even years
(47)	Nuclear Pharmacy	May 31	odd years
(48)	Occupational Therapist	May 31	odd years
(49)	Occupational Therapy Assistant	May 31	odd years
(50)	Optometrist	September 30	even years
(51)	Osteopathic Physician and Surgeon	May 31	even years
(52)	Out of State Mail Order Pharmacy	May 31	odd years
(53)	Pharmaceutical Administration Facility	May 31	odd years
(54)	Pharmaceutical Dog Trainer	May 31	odd years
(55)	Pharmaceutical Manufacturer	May 31	odd years
(56)	Pharmaceutical Researcher	May 31	odd years
(57)	Pharmaceutical Teaching Organization	May 31	odd years
(58)	Pharmaceutical Wholesaler/Distributor	May 31	odd years
(59)	Pharmacist	May 31	odd years
(60)	Pharmacy Technician	May 31	odd years
(61)	Physical Therapist	May 31	odd years
(62)	Physician Assistant	May 31	even years
(63)	Physician and Surgeon	January 31	even years
(64)	Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	even years
(65)	Podiatric Physician	September 30	even years
(66)	Pre Need Funeral Arrangement Provider	May 31	even years
(67)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(68)	Private Probation Provider	May 31	odd years
(69)	Professional Counselor	September 30	even years
(70)	Professional Employer Organization	September 30	every year
(71)	Professional Engineer	December 31	even years
(72)	Professional Land Surveyor	December 31	even years
(73)	Professional Structural Engineer	December 31	even years
(74)	Psychologist	September 30	even years
(75)	Radiology Practical Technician	May 31	odd years
(76)	Radiology Technologist	May 31	odd years
(77)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(78)	Registered Nurse	January 31	odd years
(79)	Respiratory Care Practitioner	September 30	even years
(80)	Retail Pharmacy	May 31	odd years
(81)	Security Personnel	July 31	even years
(83)	Social Service Worker	September 30	even years
(84)	Speech-Language Pathologist	May 31	odd years
(85)	Veterinarian	September 30	even years
(86)	Veterinary Pharmaceutical Outlet	May 31	odd years

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 90 days prior to the expiration date shown on of the licensee's license.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall specify a renewal application due date at least 30 days prior to the expiration date shown on the licensee's license in order to permit the renewal applications to be processed prior to the expiration of licensure in accordance with Subsection 58-1-308(4).

(5) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the licensee's license may expire before it is renewed.

(7) Renewal notices shall specify the address or addresses to where the renewal applications should be submitted.

(8) When a renewal application contains multiple parts to be returned to separate addresses, the division shall facilitate proper submission by using, to the extent resources permit, color coded renewal applications with perforated sections and return envelopes.

(9) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal or

Reinstatement During Pendency of Adjudicative Proceedings, Audit or Investigation.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(8).

(3)(a) When a renewal applicant or a reinstatement applicant under Subsections 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally renew or reinstate the applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally renewed or reinstated license.

(c) A conditional renewal or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the renewal or reinstatement applicant whether the applicant's license is unconditionally renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to a licensee who the division determines may be conditionally renewed or reinstated shall include the following:

(i) that the licensee's unconditional renewal or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional renewal or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the licensee's license automatically will or did expire on the expiration date shown on the license, and that the license will not be renewed or reinstated unless or until the applicant timely requests review; and

(v) that if the licensee timely requests review, the licensee's conditionally renewed or reinstated license does not expire until an order is issued unconditionally renewing, reinstating, denying, or partially denying the renewal or reinstatement of the licensee's license.

R156-1-308e. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) submit documentation of prior licensure in the State of Utah;

(b) submit documentation that the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide information requested by the division and board to clearly demonstrate the applicant is currently

competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(e) pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and

(f) pay the established license renewal fee and the reinstatement fee.

R156-1-308f. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308g. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation.

R156-1-308h. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308i. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure; and

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered.

R156-1-404a. Diversion Advisory Committees Created - Impaneling of Committees - Appointment of Members - Terms of Office - Vacancies in Office - Removal of Members - Quorum Requirement - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) There is created diversion advisory committees of three members for each of the occupations or professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises.

(2) The term of office of each diversion committee member shall be for a period of three years; except that initial appointments to each diversion committee after adoption of these rules shall be staggered in that one appointment shall be one year, one appointment shall be for two years and one shall be for three years. Diversion committee members shall not be appointed to serve for more than two consecutive terms.

(3) No diversion committee member may serve more than two full terms, and no member who ceases to serve may again serve on the diversion committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a diversion committee occurs, the director shall appoint a replacement to fill the unexpired term in accordance with Section 58-1-404. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) The director may remove a member for reasonable cause with the concurrence of the executive director. Reasonable cause includes failing or refusing to fulfill the responsibilities and duties of an advisory committee member, including the attendance at diversion committee meetings. After filling the unexpired term, the replacement may be appointed for

only one additional full term.

(6) A chairman of each diversion committee shall be designated by the director from among the three members appointed to the diversion committee. That person shall be responsible for managing the work of the diversion committee in consultation with the director.

(7) Committees meetings shall only be convened following the referral of a licensee to the diversion committee.

(8) Unless otherwise approved by the division, diversion committee meetings shall be held in the building occupied by the division.

(9) A majority of the diversion committee members shall constitute a quorum and may act in behalf of the diversion committee.

(10) Diversion committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings, if any.

(11) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the charges against licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404(6) through (7).

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) The legal consequences of diversion are as described in Subsections 58-1-404(8) through (10).

(6) Reporting or release of information shall be in compliance with Subsection 58-1-404(9).

(7) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the division shall enter agreements under this section, the division shall ensure the parties are competent to provide the required services. The division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or

applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership; or

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation.

R156-1-503. Reporting Disciplinary Action.

The division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

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R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rules.
R156-26a-101. Title.

These rules are known as the "Certified Public Accountant Licensing Act Rules".

R156-26a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in these rules:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(a) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in these rules means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a quality review is to be conducted.

R156-26a-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 26a.

R156-26a-104. Organization - Relationship to Rule R156-1.

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

R156-26a-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each college or university in Utah which has an accredited program as set forth in Section R156-26a-302a, a majority of which committee are to be licensed CPAs.

(a) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-204.

(b) The duties and responsibilities of the Education Advisory Committee shall include assisting the division in collaboration with the board in their duties, functions, and responsibilities defined in Section 58-1-202 as follows:

(i) reviewing an applicant's transcript of credits to determine satisfactory completion of the education requirements prior to approving the applicant to take the qualifying examination and advising the board as to the acceptability of an educational institution.

(c) The committee shall consider the following when advising the board of the acceptability of the educational institution:

(i) the institution's accreditation, the acceptability by other state licensing boards, faculty qualifications and other educational resources.

(2) There is created in accordance with Subsection 58-1-203(6), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs.

(a) The committee shall be appointed and serve in accordance with Section R156-1-204.

(b) The duties and responsibilities of the Peer Review Committee shall include administration of peer reviews in which the Division is the administering organization and shall include:

(i) considering and accepting the results of peer reviews and requiring corrective action of firms with significant deficiencies noted in the review process;

(ii) evaluating compliance of CPE programs;

(iii) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(iv) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(v) providing technical assistance to the division; and

(vi) serving as expert witnesses at administrative hearings.

R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is

accredited by the American Assembly of Collegiate Schools of Business (AACSB), or the Association of Collegiate Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a graduate degree in business including not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Association of Schools and Colleges, Commission on Colleges, or the North Central Association of Colleges and Schools, Commission on Institutions of Higher Education, or an equivalent accrediting institution from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The division in collaboration with the board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(7) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302d. Qualifications for Licensure - Examinations.

(1) The Division in collaboration with the board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA)

verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of licensees and firms.

(a) The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies. The program shall emphasize education and may include other remedial actions determined appropriate where a firm's work product and services do not comply with established professional standards. In the event a firm is unwilling or unable to comply with established standards, or intentionally disregards professional standards so as to warrant disciplinary action, the administering organization shall refer the matter to the division and shall consult with the division regarding appropriate action to protect the public interest.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review. A firm enrolled in a practice monitoring program which is administered by the American Institute of Certified Public Accountants (AICPA) will use the year of review assigned by the AICPA. The firm will notify the administering organization of the deadlines set by the AICPA.

(d) A peer review number will be assigned by the administering organization. The firm is required to provide this number and its registration number assigned by the division to all licensees employed by the firm. Licensees will be required to include these numbers with their application for renewal of a license to practice public accounting.

(3) Selection of a Peer Reviewer.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review.

(4) Qualifications of a Peer Reviewer.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or

(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(5) Conduct of Peer Review. Peer review shall be conducted as follows:

(a) Standards for review: Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective October 5, 1998 as amended, are hereby incorporated by reference and adopted as the minimum standards for quality reviews of all firms. This section shall not require any firm or licensee to become a member of AICPA or any administering organization.

(6) Procedures in Case of Substandard Review, a Modified or Adverse Report or repeat findings.

(a) If the administering organization finds that a peer review was not performed in accordance with these rules or the peer review results in a modified or adverse report or in repeat findings, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under these rules, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of on-site reviews, or;

(B) results in an evaluation and report on selected engagements in the case of off-site reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(6).

(b) A multi-state firm not granted approval under R156-26a-303a(8)(a) shall undergo a peer review pursuant to these rules which shall comply with R156-26a-303a(8)(a) of the multi-state firm within this state.

(c) A multi-state firm seeking approval under R156-26a-303a(8)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(d) A multi-state firm shall submit the peer review report it receives to the Utah administering organization as required by R156-26a-303a(6) within 30 days of acceptance.

(8) Exemption.

(a) A firm which does not perform services as set out in R156-26a-303a(5)(b) or (c) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its

registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10)(a) or (b), the Division may authorize a change in a firm's year of review.

(10) Extension.

(a) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(12)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 90 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process, including the administering organization and the PROC, will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) Peer Review Administered by the Division of Occupational and Professional Licensing.

(a) Any firms not participating in a peer review program administered by an administering organization approved by the Division will be administered by the division.

(14) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

(1) Standards for programs which qualify. Qualified continuing professional education must be current and relevant to the practice of accountancy and maintain or increase the licensee's competence and shall meet the following standards:

(a) an outline of the program shall be prepared in advance and retained by the program sponsor for four years from the date of the program;

(b) the program developers and instructors shall be qualified in content and teaching methods used to develop and teach the subjects covered;

(c) the program shall clearly identify learning objectives and specify the level of knowledge participants should have in order to participate in the program;

(d) the program shall be reviewed or evaluated by a qualified person other than the developer or instructor to ensure compliance with these standards and evidence of such review shall be available upon request;

(e) the program sponsors shall have an effective means for evaluating the performance of the program including whether the standards described herein have been met;

(f) participants shall be informed in advance of objectives, prerequisites, prior education or experience levels needed, program content, nature and extent of advance preparation, teaching method to be used, recommended or approved continuing professional education hours allowed for credit, and any relevant administrative policies necessary to obtain the maximum benefit of the program and encourage participation only by individuals with appropriate education or experience;

(g) the program sponsor shall maintain a record of registration and attendance for four years from the date of the program;

(h) the number of participants and physical facilities shall be consistent with the teaching method specified;

(i) Subjects which qualify. The program and material provided to participants shall be sufficient to meet the program objectives and be current, relevant and technically accurate for the approved subjects which qualify under this section. These include:

(i) Accounting and Auditing;

(ii) Taxation;

(iii) Management Advisory Services;

(iv) Information Technology;

(v) Communication Arts;

(vi) Mathematics, Statistics, Probability and Quantitative Analysis;

(vii) Economics;

(viii) Business Law and Litigation Support;

(ix) Functional Fields of Business:

(A) Finance;

(B) Production;

(C) Marketing;

(D) Personnel Relations, Development and Management;

(E) Business Management and Organizations;

(F) Social Environment of Business;

(G) Specialized Areas of Industry such as Film Industry, Real Estate, Farming;

(j) Program Sponsorship. A program may be sponsored by one of the following, provided that all standards are met:

(i) professional development programs of recognized national and state accounting organizations;

(ii) technical sessions at meetings of recognized national and state accounting organizations and their chapters;

(iii) formal organized in-firm educational programs;

(iv) programs of other state or nationally recognized non-profit or educational organizations including colleges and universities; and

(v) any other program that complies with the standards of this section;

(k) Continuing Education Credit Hours. Qualifying continuing education programs must be at least 50 minutes in length. Continuing education credits will be determined based on the total number of minutes of formal presentations, supervised practice or supervised study time divided by 50 minutes. The resulting credit hours will be rounded down to the nearest whole number. No fractional credit hours will be granted. For example, a program that lasts from 8:00 a.m. until 12:00 noon with two 15 to 20 minute breaks would qualify for four CPE credits;

(i) Accredited University or College Credits.

(A) Each semester hour credit shall equal 15 hours toward the requirement. A quarter hour shall equal ten hours;

(B) Non-credit short courses or other individual study programs which require registration and provide evidence of satisfactory completion will qualify;

(ii) Self Study or Correspondence Courses. Formal correspondence or other individual study programs which require registration, provide evidence of satisfactory completion including test results, and are susceptible to verification of satisfaction of the Standards for Programs Which Qualify noted above will qualify. The CPA Board or CPE committee or the Approved CPE Registry will determine if number of credit hours recommended is equivalent to the hours as determined under Subsection (1)(l).

(l) Instructor CPE Credit. Instructors of programs meeting the standards under this section will be granted two hours of CPE credit for each hour of instruction time for the first class taught on a particular topic which meets the criteria of this rule, not to exceed 24 hours for any one topic. No credit is given for class subjects which have been previously taught by the instructor. The maximum credit for teaching and preparation cannot exceed 50% (or 40 hours) of the CPE requirement;

(m) Authors of published books and articles may apply to have CPE credit granted in an amount to be determined by the board upon review of the book or article. The maximum credit for books or articles cannot exceed 25% of the CPE requirement; and

(n) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(i) personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(ii) committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(2) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of Subsection (1) or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(3) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under Subsection (1);

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants

available for audit by representatives of the division, the board or peer advisory committees of the board.

(4) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(5) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period. Carry forward credits may not be used to satisfy the 20 hour minimum annual CPE requirement.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Failure to meet the 20 hour minimum per year requirement. An individual who fails to complete the 20 hour minimum per calendar year requirement will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date, the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with passing scores required for initial licensure. CPE credit will not be given for completion of this requirement.

(iii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the division, within 60 days of receiving notification by the division of their shortage, the relevant requirement under R156-26-303b(6)(c)(i) or (ii).

(iv) Waiver for Medical Reasons. A licensee may request the board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

Renewal procedures shall be in accordance with Section R156-1-308.

R156-26a-305. Use of Certified Public Accountant (CPA) Title.

An individual who has a current CPA license issued by any other state may use the title or designation "Certified Public Accountant" but may only practice public accountancy in the state of Utah if currently licensed in the state of Utah or if performing public accountancy which is incidental to regular practice in another state as defined in Subsection 58-26a-305(1) and as further clarified in R156-26a-102(4).

R156-26a-307. Reinstatement of Licenses.

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) This 80 hour requirement is waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) This 80 hours requirement is waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees and the application for reinstatement is filed with the Division within six months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current

CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted January 12, 1998, as amended, January 14, 1992 and October 28, 1997, which is hereby incorporated by reference.

KEY: accountants, licensing, peer review*

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Notice of Continuation May 12, 1997	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rules.
R156-37-101. Title.

These rules are known as the "Utah Controlled Substances Act Rules."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or these rules:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(4) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(5) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-103. Purpose - Authority.

These rules are adopted by the division under the authority of Subsections 58-1-106(1) and 58-37-6(1)(a) to enable the division to administer Title 58, Chapter 37.

R156-37-104. Organization - Relationship to Rule R156-1.

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

R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse;
(j) certified nurse midwife;
(k) certified registered nurse anesthetist;
(l) pharmaceutical researcher;
(m) drug outlets located in the state of Utah licensed as a:
(i) retail pharmacy;
(ii) hospital pharmacy;
(iii) institutional pharmacy;
(iv) pharmaceutical manufacturer;
(v) pharmaceutical wholesaler/distributor;
(vi) branch pharmacy;
(vii) nuclear pharmacy; or
(viii) veterinary pharmaceutical outlet;
(n) pharmaceutical dog trainer;
(o) pharmaceutical teaching organization;
(p) analytical laboratory;
(q) out-of-state mail order pharmacy;
(r) pharmaceutical administration facility;
(s) animal euthanasia agency; and
(t) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:

(a) submit an application in a form as prescribed by the division; and

(b) shall pay the required fee as established by the division under the provisions of Section 63-38-3.2.

(2) Any person seeking a controlled substance license shall be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:

(a) qualifications to engage in practice with controlled substances; and

(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.

The division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

R156-37-304. Qualifications for Licensure - Examinations.

Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the division on the subject of controlled substance laws.

R156-37-305. Exemption from Licensure - Animal Euthanasia and Law Enforcement Personnel.

In accordance with Subsection 58-37-6(2)(d), the

following persons are exempt from licensure under Title 58, Chapter 37:

(1) Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

(2) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances which come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the division all controlled substance license certificates issued by the division to the division upon an action which revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(q), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under these rules or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

R156-37-601. Access to Records, Facilities, and Inventory.

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, these rules or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and these rules or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

R156-37-602. Records.

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) there is a physical printout of the controlled substances dispensed each day that details the prescription number, the quantity of each drug dispensed, the prescribing practitioner and the dispensing pharmacist. Each pharmacist that is documented on the printout as having dispensed a controlled substance shall sign his name to the printout, attesting to the accuracy of the

data detailed, or shall make appropriate changes and then sign his name.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance, each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) A prescription for a Schedule II controlled substance shall not be written for a quantity greater than medically necessary and in no case in quantities greater than a 30 day supply.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term require the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a

comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall:

(a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or

(b) require the authorization of the division after submission to the division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a division authorized agent as is specifically instructed by the division in its written authorization.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the division or its agents for inspection for a period of five years.

R156-37-607. Surrender of Suspended or Revoked License.

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

R156-37-608. Herbal Products.

The division shall not apply the provisions of the Controlled Substance Act or these rules in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.

(1) In accordance with Subsections 58-37-7.5(6)(a), the format in which the information required under Section 58-37-7.5 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk; or

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the division and receives prior approval.

(3) The division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically

recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) Each pharmacy or pharmacy group may submit the data either weekly, bi-weekly, or monthly. Any pharmacy which does not declare its intention for timely submission of data will be presumed to have chosen monthly submission.

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the division including:

(a) the pharmacy name;

(b) NABP number;

(c) the period of time covered by each submission of data;

(d) the number of prescriptions in the submission;

(e) the submitting pharmacist's signature attesting to the accuracy of the report; and

(f) the date the submission was prepared.

R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsection 58-37-7.5(7)(b), persons may request information from the database either orally or in writing.

(4) The manager of the database may release information upon oral request only if the identity of the person is verified. Identity of a practitioner may be made by use of a DEA number or other verifiable, confidential numbers provided by the division or other government agencies to practitioners.

(5) Any individual may request information in the database relating to that individual's receipt of controlled substances. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph (5)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(6) Before data is released upon oral request, a written request may be required and received.

(7) Database information may be disseminated either orally, by facsimile or by U.S. mail.

KEY: controlled substances, licensing
May 19, 1998 **58-1-106(1)**
Notice of Continuation May 29, 1997 **58-37-6(1)**
58-37-7.5(7)

R199. Community and Economic Development, Community Development.

R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.

R199-8-1. Purpose.

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 9-4-301 et seq.

R199-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by governmental entities.

Eligible applicants include state agencies and subdivisions of the state as defined in Subsection 9-4-302(5)3, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R199-8-3. Application Requirements.

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Department of Community and Economic Development (DCED). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed on the next available "Application Review Meeting" agenda.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. State statute requires the Board before it grants or loans any funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants to provide the SHPO with a description of the proposed project and attach the SHPO's comments to the application. The Board also requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and the SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed

project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" shall be "Project Review Meetings". The final meeting of each "Trimester" shall be a "Prioritization and Funding Meeting". Board meetings shall be held monthly, except July when no meeting will be held. "Prioritization and Funding Meetings" shall be held in April for the 1st Trimester, August for the 2nd Trimester and December for the 3rd Trimester.

The deadlines for submitting applications for each of the Trimesters will no later than the following dates: 1st Trimester, December 1st; 2nd Trimester, April 1st; 3rd Trimester, August 1st.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on the next available "Project Review Meeting" agenda.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Prioritization List" for consideration at the next "Prioritization and Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants may make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of bona fide emergencies.

E. Applications for funding assistance which have been placed on the "Prioritization List" will be considered at the "Prioritization and Funding Meeting" for that Trimester. Applications which do not receive funding authorization will be held over for reconsideration at the next "Prioritization and Funding Meeting". Applications which have not received funding authorization after reconsideration will be deemed denied.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from DCED. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to PCIFB, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or DCED's list, will not be funded by the PCIFB, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than April 1st of each year. The up-dated list shall be submitted in the uniform format required by the Board.

R199-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only

be granted if the modified project, use or ownership is also an eligible us of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

KEY: grants
January 23, 2001 9-4-305
Notice of Continuation December 23, 1997

R230. Community and Economic Development, Indian Affairs.

R230-1. Native American Grave Protection and Repatriation.

R230-1-1. General Policy Statement Regarding Native American Burials.

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "holy ground," never to be disturbed.

2. Native American burial sites discovered on state lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R230-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands, shall be in keeping with that sacred nature.

R230-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.

2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land where Native American remains are found.

3. "Committee" means the Native American Remains Review Committee.

4. "Director" means the Director of the Division of Indian Affairs.

5. "Division" means the Division of Indian Affairs.

6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.

R230-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands.

R230-1-6. Duties Upon Discovery of Remains.

1. Remains are to be treated at all times with dignity and respect. Any person who discovers a dead body shall not damage the body and shall not disinter or remove the body without proper authority. Any person who discovers a dead body shall report the discovery to a local law enforcement agency. A violation of these rules may constitute a criminal offense and may subject the offender to criminal sanctions under Section 76-9-704.

2. Any person or entity who discovers Native American remains must cease all activity which might disturb the remains and take reasonable steps to protect the discovered remains. Such steps may include, but are not limited to, restoring the site to its original condition or otherwise securing and protecting the site to prevent any possible desecration or destruction.

3. If it is unclear whether the remains are of Native American origin upon a cursory examination, the agency must take reasonable steps to determine the ethnicity of the remains.

a. The agency may further investigate the ethnicity by retaining the services of a qualified archeologist to conduct a physical examination of the remains.

b. If a physical examination of the remains is not sufficient to determine ethnicity, the agency may seek an excavation permit by the Division of State History pursuant to Section 9-8-305 in order to conduct limited excavation to search for associated funerary objects.

c. If no other method of investigation is sufficient to determine ethnicity, the agency may allow limited scientific testing on the remains, by the least intrusive and least destructive means possible to determine ethnicity.

4. Any person or entity who discovers Native American remains on state land must promptly notify the Division by telephone. As soon as is reasonably possible, but not later than five business days, written notification of the discovery must also be provided.

a. Written notification shall include a detailed description of what was found, the place where the remains were found, the conditions under which the person discovered the remains and any other facts that may help identify the remains.

b. Written notification shall be provided to:

i. the state agency having management authority over the land where the remains were discovered;

ii. the Division of Indian Affairs; and

iii. the Division of State History.

R230-1-7. Resumption of Activity.

1. The activity in which the remains were discovered or any further excavation may not resume until a plan for the preservation of the remains has been adopted by the Director, in consultation with the entity who discovered the remains, the agency, and a designated representative from the Division of State History.

a. Preference shall be given to a plan which provides for restoration of the site to its original condition and discontinuing all activity in the area to limit any further disturbance of the site.

b. If it is not feasible to discontinue the activity, excavation may continue pursuant to a permit issued under Section 9-8-305 and in accordance with a plan designed to minimize any further desecration of the remains.

2. The consultation shall take place as soon as reasonably possible after the Director and the agency have been notified of the discovery. The authority to determine the disposition and treatment of remains shall not be exercised in a manner that would unreasonably delay completion of a construction project or any other project.

3. Activity may not resume until the Director has been given reasonable notice of when the planned excavation shall take place and the Director or his designee has the opportunity to be present at the excavation.

a. The cost of the excavation shall be borne by the party

requesting the excavation.

b. If the remains are excavated and ownership has not yet been determined, the Division may take temporary possession of the remains pending a final determination of ownership.

R230-1-8. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains, the Director shall notify any known or possible lineal descendants.

2. If no lineal descendants can be ascertained, the Division shall notify all Indian tribes and Navajo tribal chapters located in Utah and any other interested parties who have requested notification and have designated a contact person.

3. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing a claim by posting the notice in a public place and/or by including it in tribal news media.

4. Any interested party may request notification of the discovery of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R230-1-9. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their claim within sixty days from the date that notification is sent out by the Division.

R230-1-10. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership, the Committee shall request a written petition from the claimant, substantiating the claim. If the claimant makes a substantial showing of lineal descendence or cultural affiliation with the remains, the Committee may grant ownership or control of the remains to that claimant.

2. When two or more claims have been submitted, the determination of ownership shall be made in an informal proceeding which shall comply with Section 63-46b-0.5 et seq., the Utah Administrative Procedures Act.

R230-1-11. Dispute Resolution of Competing Claims.

1. After the expiration of time for claims to be submitted, the Committee shall schedule a time to hear the matter and shall notify the claimants.

2. The Committee shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence and comment on issues concerning their claim.

a. Lineal descendence or cultural affiliation may be established by genealogical records, archeological records, oral or written history, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

b. If the evidence presented at the hearing is not sufficient to resolve the disputed claims or enable the Committee to make a recommendation of ownership, upon a majority vote of the Committee, scientific testing may be permitted to determine ethnicity.

3. The Committee shall attempt to facilitate a settlement of the dispute and shall grant ownership to the claimant that has shown the closest lineal descendence, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains by a preponderance of the evidence.

R230-1-12. Adjudication of Disputed Claims.

1. If competing claimants are unable to resolve their dispute at the informal hearing, the Committee shall issue findings relating to the identity of or the cultural affiliation of the remains and a decision of disposition.

2. A copy of the Committee's findings and decision shall be mailed to each of the claimants along with a notice explaining the procedure for seeking an appeal of the Committee's decision in the District Court.

3. If none of the claimants have filed an appeal in the District Court within 30 days, the Committee's decision shall be binding upon the parties.

R230-1-13. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency.

2. If the remains have already been excavated pursuant to R230-1-6, the owner may then take possession of the remains from the Division or the agency that has temporary possession of the remains.

R230-1-14. Disposition of Unclaimed Remains.

1. When the plan that is adopted for preservation of the unclaimed remains directs that the activity be re-routed and the site be restored, the remains may be permanently left in place upon final approval by the agency and in agreement with the Division.

2. When no claim of ownership has been made for discovered remains and the remains are excavated pursuant to R230-1-6, they shall be reinterred in the Indian Burial Repository.

R230-1-15. Scientific Investigation of Unclaimed Remains.

1. No scientific investigation beyond that allowed in R230-1-6 shall be conducted on unclaimed remains except upon written permission granted by the Committee.

KEY: Indian affairs, state lands, Native American remains
February 7, 1996 9-9-104
Notice of Continuation February 1, 2001 9-9-403
9-9-405

R251. Corrections, Administration.
R251-102. Release of Communicable Disease Information.
R251-102-1. Authority and Purpose.

(1) This rule is authorized under Section 64-13-36(3)(a).

(2) The purpose of this rule is to designate the persons who will be permitted access to information in Department of Corrections inmate medical files.

R251-102-2. Definitions.

(1) "AIDS" means Acquired Immunodeficiency Syndrome.

(2) "Communicable Disease" means any of a group of diseases easily transmitted from one person to another.

(3) "HIV" means Human Immunodeficiency Syndrome.

(4) "inmates" means offenders in the secure facilities of the Department.

R251-102-3. Access to Information in Medical Files.

(1) Information in an inmate's medical file may include:

(a) results of tests conducted for communicable diseases, including AIDS and HIV; and

(b) information self-admitted by an inmate.

(2) The Department shall provide information regarding communicable diseases to:

(a) the Board of Pardons and Parole;

(b) designated Department Adult Probation and Parole agents; and

(c) other Department employees, if necessary, based on legitimate penological interests as determined by a division director in consultation with Clinical Services.

KEY: medical records, communicable diseases
January 4, 2001 64-13-10

R307. Environmental Quality, Air Quality.
R307-103. Administrative Procedures.
R307-103-1. Scope of Rule.

(1) This rule R307-103 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 2, Utah Air Conservation Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.

(2) The executive secretary may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 2, the recipient, or in some situations other persons, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63-46b-1(2)(k) and are not governed by R307-103-3 through R307-103-14 of this Rule. Initial orders and notices of violation are further described in R307-103-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R307-103.

(5) The Utah Administrative Procedures Act and this rule R307-103 also govern any other formal adjudicative proceeding before the Air Quality Board.

R307-103-2. Initial Proceedings.

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) certification for tank vapor tightness testing under R307-342;

(e) certification of asbestos contractors under R307-801;

(f) fees imposed for major source reviews under R307-414;

(g) assessment of other fees except as provided in R307-103-14(7);

(h) eligibility of pollution control equipment for tax exemptions under R307-120, R307-121, and R307-122;

(i) requests for variances, exemptions, and other approvals;

(j) requests or approvals for experiments, testing or control plans; and

(k) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840.

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is signed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

R307-103-3. Contesting an Initial Order or Notice of Violation.

(1) Procedure. Initial orders and notices of violation, as described in R307-103-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Air Quality Board, Division of Air Quality, PO Box 144820, Salt Lake City, Utah 84114-4820.

(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of 63-46b-3(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R307-103-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

R307-103-4. Designation of Proceedings as Formal or Informal.

(1) Contest of an initial order or notice of violation resulting from proceedings described in R307-103-2(1) shall be conducted as a formal proceeding.

(2) The board in accordance with 63-46b-4(3) may convert proceedings which 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.

R307-103-5. Notice of and Response to Request for Agency Action.

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with 63-46b-3(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R307-103-6(4), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63-46b-6.

R307-103-6. Parties and Intervention.

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the board has granted intervention under R307-103-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of 63-46b-9. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R307-103-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63-46b-3 may file a Request for Agency Action at the same time he files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of 63-46b-9(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

R307-103-7. Conduct of Proceedings.

(1) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63, Chapter 46b. The board is also the "presiding officer," as that term is used in Title 63, Chapter 46b, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.

(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(5) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(6) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63-46b-10, at least seven business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(7) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall

be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

R307-103-8. Hearings.

The presiding officer 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.

R307-103-9. Orders.

(1) Recommended Orders of Appointed Presiding Officers.

(a) Unless an appointed presiding officer is required by the terms of his appointment to issue a final order, he shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(d) The board may modify this procedure with notice to all parties.

(2) Final Orders. The board shall issue a final order which shall include the information required by 63-46b-10 or 63-46b-5(1)(i).

R307-103-10. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.

(b) The board may order a stay of the order 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 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) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.

(b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R307-103-10(1)(b) are met.

R307-103-11. Reconsideration.

No agency review under 63-46b-12 is available. A party may request reconsideration of an order of the presiding officer as provided in 63-46b-13.

R307-103-12. Disqualification of Board Members or Other Presiding Officers.

(1) Disqualification of Board Members or Other Presiding Officers.

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

R307-103-13. Declaratory Orders.

(1) A request for a declaratory order may be filed in accordance with the provisions of 63-46b-21. The request shall be titled a petition for declaratory order and shall meet the requirements of 63-46b-3(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R307-103-4(2) above.

(3) The provisions of 63-46b-4 through 63-46b-13 apply to declaratory proceedings, as do the provisions of this Rule R307-103.

R307-103-14. Miscellaneous.

(1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.

(2) Extensions of Time. Except as otherwise provided by

statute, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R307-103-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation.

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R307-103-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63, Chapter 2, Utah Government Record Access and Management Act, are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

KEY: air pollution, administrative procedure, hearings*
December 7, 2000 63-46b

R309. Environmental Quality, Drinking Water.
R309-150. Water System Rating Criteria.
R309-150-1. Authority.

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-101 through R309-113 and R309-301 through R309-302 hereinafter referred to as Rules.

R309-150-2. Extent of Coverage.

These rules shall apply to all public water systems as defined in R309-101.

R309-150-3. Definitions.

Approved - means that the public water system is operating in substantial compliance with all the Rules as measured by this rule.

Board - means the Drinking Water Board.

Community Water System - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.

Corrective Action - means a provisional rating for a public water system not in compliance with the Rules, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

Executive Secretary - means the Executive Secretary of the Drinking Water Board.

Major Bacteriological Routine Monitoring Violation- means that no routine bacteriological sample was taken as required by R309-104-4.6.1.

Major Bacteriological Repeat Monitoring Violation - means that no repeat bacteriological sample was taken as required by R309-104-4.6.2.

Major Chemical Monitoring Violation - means that no initial background chemical sample was taken as required in R309-106-3(1)(b).

Maximum Contaminant Level (MCL) - The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Individual maximum contaminant levels (MCLs) are listed in R309-103.

Minor Bacteriological Routine Monitoring Violation- means that not all of the routine bacteriological samples were taken as required by R309-104-4.6.1.

Minor Bacteriological Repeat Monitoring Violation - means that not all of the repeat bacteriological samples were taken as required by R309-104-4.6.2.

Minor Chemical Monitoring Violation - means that the required chemical sample(s) was not taken in accordance with R309-104-4.

Non-Community Water System - means a public water system that is not a community water system or a non-transient non-community water system.

Non-Transient, Non-Community Water System - means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

Not Approved - means the water system does not fully comply with the Rules as measured by this rule.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with system but not under such control.

Routine Chemical Monitoring Violation - means no routine chemical sample(s) was taken as required in R309-104-4.

Sanitary Seal - A cap that prevents contaminants from entering a well through the top of the casing.

Shall - means that a particular action is obliged and has to be accomplished.

Unregulated Contaminant - A known or suspected disease causing contaminant for which no maximum contaminant level has been established.

R309-150-4. Water System Ratings.

(1) The Executive Secretary shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to Not Approved and Corrective Action rated water systems for each violation of these requirements (R309-101 through R309-113 and R309-301 through R309-302) as the requirements apply to each individual water system. The number of points that shall be assessed are outlined in the following sections of this rule. The number of points represent the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality, Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings.

(a) Approved - In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

(i) Community water system - 150 points;

(ii) Non-Transient Non-Community water system - 120 points; and

(iii) Non-Community water system - 100 points.

(b) Not Approved - In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) Corrective Action - In order to qualify for a Corrective Action rating the public water system must submit the following:

(i) A written agreement to the Executive Secretary stating a willingness to comply with the requirements set forth in the

Rules; and

(ii) A compliance schedule and time table agreed upon by the Executive Secretary outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and

(iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Executive Secretary. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Executive Secretary may at any time rate a water system not approved if an immediate threat to public health exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or assessed points to the Drinking Water Board by filing a request for a hearing with the Executive Secretary. The Executive Secretary shall place this matter on the agenda of the next regular meeting and so inform the appellant. The request for a hearing must be received by the Executive Secretary at least 14 calendar days prior to a scheduled Board meeting in order to be placed on the Board's agenda.

R309-150-5. Quality, Monitoring and Public Notification Violations.

(1) Bacteriologic: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-103.2.6; or the monitoring requirements in R309-104-4.6; and the associated public notification requirements in R309-104-7. The bacteriological assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly.

(a) For each major bacteriological routine monitoring violation 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) For each minor bacteriological routine monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(c) For each major bacteriological repeat monitoring violation 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) For each minor bacteriological repeat monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(e) For each additional monitoring violation (R309-104-4.6.2.e.) 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(f) For each non-acute bacteriological MCL violation (R309-103-2.7.a) 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) For each acute bacteriological MCL violation (R309-103-2.7.b.) 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(2) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-103.2; or the monitoring requirements in R309-104-4; and the associated public notification requirements in R309-104-7. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Executive Secretary.

(a) Inorganic and Metal Contaminants:

(i) For each major chemical monitoring violation for inorganic and metal contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for inorganic and metal contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for inorganic and metal contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) Sulfate (for non-community water systems only):

(i) For each major chemical monitoring violation for sulfate 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for sulfate 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for sulfate 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(c) Radiologic Contaminants:

(i) For each major chemical monitoring violation for radiological contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for radiological contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for radiological contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) Asbestos Contaminants:

(i) For each major chemical monitoring violation for source water or distribution system asbestos 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for source water or distribution system asbestos 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for source water or distribution system asbestos 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(e) Nitrate:

(i) For each routine chemical monitoring violation for nitrate 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrate 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(f) Nitrite:

(i) For each routine chemical monitoring violation for nitrite 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrite 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) Volatile Organic Chemicals:

(i) For each major chemical monitoring violation for volatile organic chemical contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for volatile organic chemical contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(i) Unregulated Organics:

(i) For each routine chemical monitoring violation for unregulated contaminants 5 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(j) Total Trihalomethanes:

(i) For each routine chemical monitoring violation for total trihalomethanes 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(ii) For each MCL exceedance for total trihalomethanes 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) A system which fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification 10 point shall be assessed.

(iv) A system which fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification 10 points shall be assessed.

(v) A system which fails to complete public notification/education if the lead/copper action levels have been exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system which still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification 2 point shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(m) Surface Water Treatment:

(i) Plant Operation: Based upon the following criteria (a. through d.) 20 to 150 points shall be assessed as appropriate to indicate the threat to public health. For the associated failure to perform public notification 1 to 10 points shall be assessed. The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period.

(A) Number of events where disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours; or

(B) Number of events where turbidity exceeds 5 NTU; or

(C) Each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent; or

(D) Each month where the percentage of distribution sampling violations for detectable levels of disinfectant is greater than 5 percent.

(ii) For water systems having sources which are classified as under direct influence from surface water and which fail to

abandon, retrofit or provide conventional complete treatment or it's equivalent within 18 months of notification shall be assessed 20 to 50 points based upon the degree and seasonality of the surface water influence. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

R309-150-6. Physical Facilities.

All points assessed to public water systems via this subsection are based upon violation of R309-113 and R309-200 through R309-211. These points shall be assessed and updated upon notification of the Executive Secretary and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed 150 points.

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth 2 points shall be assessed.

(b) Where no facilities exist for release (wasting) of less desirable water held in storage 2 points shall be assessed.

(c) Where the diversion facilities do not minimize frazil ice formation by holding intake velocities to less than 0.5 feet per second 2 points shall be assessed.

(d) Where diversion facilities are not adequately protected from damage by ice buildup 2 points shall be assessed.

(e) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake 2 points shall be assessed.

(f) Where reservoirs have not had brush and trees removed to the high water level 2 points shall be assessed.

(g) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading 10 points shall be assessed.

(3) Well Sources

(a) For each well which is not equipped with a sanitary seal, or has any unsealed opening into the well casing 50 points shall be assessed.

(b) For each well which does not utilize food grade mineral oil for pump lubrication 25 points shall be assessed.

(c) For each well casing which does not terminate at least 12 inches above the pumphouse floor, 18 inches above ground, and/or five feet above the highest flood elevation, or is not fitted with an acceptable pitless adaptor 1 to 20 points shall be assessed based upon whether the adjacent land slopes toward or away from the wellhead; the integrity of the cement surrounding the wellhead and other factors that would jeopardize the integrity of the wellhead seal.

(d) For each well casing vent which is not properly covered with a No. 14 mesh screen 5 points shall be assessed.

(e) For each well which has discharge piping that is not properly equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow and 5) shutoff valve 1 to 5 points shall be assessed depending upon the number of the above components that are present.

(f) For each well where there is no means to release trapped air from the discharge piping 5 points shall be assessed.

(g) For each well house which does not have a drain-to-daylight installed 5 points shall be assessed.

(4) Spring Sources:

(a) For each spring source which allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices) 1 to 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water.

(b) For each spring area which does not have a minimum of ten feet of relative impervious soil or an acceptable liner 10 points shall be assessed.

(c) For each spring area that has deep rooted vegetation within the fenced collection area 10 points shall be assessed.

(d) For each spring area that has deep rooted vegetation interfering with the spring collection 10 points shall be assessed.

(e) For each spring which does not have a proper collection/junction box; and does not have the following: a proper shoebox lid, gasket, No. 14 mesh screen on the vent line and lock; 1 to 25 points shall be assessed. The number of points shall be determined by the number of the above items that are present.

(f) For each spring collection area without a proper fence (unless the spring is located in a remote area where no grazing or public access is possible as specified in R309-106(5)(e)) 10 points shall be assessed.

(g) For each spring collection area that does not have a diversion channel capable of diverting surface water away from the collection area 5 points shall be assessed.

(h) For each spring system which does not have a permanent flow measuring device 5 points shall be assessed.

(i) For each spring area with an overflow/drain that is not properly screened with a No. 4 mesh screen or does not have adequate freefall (12 to 24 inches) between the drain invert and the surrounding ground 5 to 10 points shall be assessed. The number of points shall be based upon the presence of a screen and the slope of the ground surrounding the overflow/drain outlet.

(5) Disinfection by gaseous chlorine:

(a) A chlorinated water system that does not maintain a detectable chlorine residual throughout the distribution system shall be assessed 10 points.

(b) An improperly heated, lighted, and vented chlorinator building shall be assessed 2 points.

(c) A chlorinated water system that does not have a test kit to measure chlorine residual shall be assessed 2 points.

(d) A chlorinated water system that does not have a cylinder wrench located on the yoke valve shall be assessed 2 points.

(e) A chlorinated water system that utilizes one ton cylinders and does not have proper chlorine leak detection and repair kit equipment shall be assessed 15 points.

(f) A chlorinated water system that utilizes 150 pound cylinders and does not have proper chlorine leak detection and repair kit equipment shall be assessed 2 points.

(g) A chlorinated water system that does not have chlorine

cylinders properly restrained or isolated from operating areas shall be assessed 2 points.

(h) A chlorinated water system that does not have a feeder vent properly vented to the outside and screened with a No. 14 mesh screen shall be assessed 2 points.

(i) A chlorinated water system without means to measure chlorine feed and cylinder usage shall be assessed 2 points.

(j) A chlorinated water system without access to a properly stored gas mask or stores a gas mask in the same room where chlorine gas is handled shall be assessed 5 points.

(k) A chlorination station without a means of measuring the volume of water treated shall be assessed 2 points.

(6) Disinfection by liquid hypochlorite:

(a) A chlorinated water system that does not maintain a detectable chlorine residual throughout the distribution system shall be assessed 10 points.

(b) An improperly housed and secured hypochlorinator station shall be assessed 2 points.

(c) A chlorinated water system that does not have a test kit to measure chlorine residual shall be assessed 2 points.

(d) A chlorinated water system that does not maintain a spare parts repair kit for the positive displacement pumps shall be assessed 2 points.

(e) A hypochlorination station without a means of measuring the volume of water treated shall be assessed 2 points.

(7) Storage:

(a) A water system with an uncovered finished water storage reservoir shall immediately be assessed a rating of not approved.

(b) For each storage reservoir access that is not an overlapping (shoe box) type lid, locked and is at least 4 inches above the top of the tank 10 points shall be assessed.

(c) For each improperly vented storage reservoir 5 points shall be assessed.

(d) For each storage reservoir overflow that: is not properly screened, is not sloped for drainage, or is connected to a sewer without an appropriate air gap; 5 to 15 points shall be assessed based on the number and severity of the above items that are present.

(e) For each storage reservoir with inadequate or improper means of drainage 2 points shall be assessed.

(f) For each storage reservoir where the roof and sidewalls are not water tight shall be assessed 10 to 50 points based upon the size and number of cracks, the loss of structural integrity and the access of contamination to the drinking water.

(g) For each storage reservoir without an access ladder, or railing where required (elevated tank) 2 points shall be assessed.

(h) For each storage reservoir with internal coatings not in compliance with ANSI/NSF standard 61 30 points shall be assessed.

(8) Distribution System:

(a) A water system which fails to provide at least 20 psi at all times and at all locations within the distribution system during peak instantaneous flow conditions shall be assessed 50 points.

(b) A water system using unapproved pipe and materials shall be assessed 30 points.

(c) A water system with pipelines installed improperly without adequate clearance or separation from sewer lines shall be assessed 30 points.

(d) For each air vacuum release valve which is not properly screened and turned down 2 points shall be assessed up to a maximum of 20 points per system.

(e) For each flooded air vacuum release valve chamber 20 points shall be assessed up to a maximum of 50 points per system.

(9) Quantity requirements

(a) A water system which does not have sufficient source capacity to meet peak daily and average yearly flow requirements shall be assessed from 5 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages or low pressure.

(b) A water system which does not have sufficient storage capacity to meet average daily flow requirements shall be assessed from 5 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages.

R309-150-7. Operator Certification.

Operator certification:

(1) A water system that is required to have a certified operator and does not shall be assessed 30 points.

(2) A water system where the operator is not certified at the appropriate level shall be assessed 10 points.

(3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-301-5) certified at no more than one grade level below the level of the system shall be assessed 5 to 15 points. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level.

(4) A water system may be credited up to a maximum of 20 points which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

(a) A water system that is not required to have a certified operator and does shall be credited 10 points.

(b) A water system that has operators that are certified at a higher level than required shall be credited 10 points.

(c) A water system that has operators certified in other areas that are not required by that water system, such as treatment or backflow prevention certification, shall be credited 10 points.

R309-150-8. Cross Connection Control Program.

Cross Connection Control Program:

(1) A water system which does not have any of the below listed components of a cross connection control program in place shall be assessed 50 points.

(2) A water system which only has some of the components of a cross connection control program in place shall be assessed the following number of points:

(a) A water system which does not have local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy) shall be assessed 10 points.

(b) A water system that does not provided public education or awareness material or presentations on an annual basis shall be assessed 10 points.

(c) A water system that does not have an operator with training in the area of cross connection control or backflow prevention shall be assessed 10 points.

(d) A water system with no written records of cross connection control activities, such as, backflow assembly inventory and test history, shall be assessed 10 points.

(e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions) shall be assessed 10 points.

R309-150-9. Drinking Water Source Protection.

Drinking water source protection (well, spring or tunnel): Points shall be assessed for each source after a system fails to complete source protection plans as specified in R309-113. The points shall remain until such time as the source protection plan is completed and concurred with.

(1) For each groundwater source for which a protection area has not been delineated shall be assessed 5 points.

(2) For each groundwater source for which there is no inventory of potential contamination sources 5 points shall be assessed.

(3) For each groundwater source for which potential contamination sources assessed are not adequately controlled 5 points shall be assessed.

(4) For each groundwater source where there is not a plan to address any new potential contamination sources that may be located in protection areas shall be assessed 5 points.

(5) For each water system that completes a source protection plan prior to the required deadline in R309-113, the system shall receive a credit of 20 points that shall remain on record until the deadline requiring a plan for the system's source(s) passes.

R309-150-10. Administrative Issues.

Points in this area shall be assessed at the time that the failure occurs or upon notification of the Executive Secretary and shall remain until the issue is resolved unless otherwise specified.

(1) Administrative Data -

(a) A water system which has not designated a person or organizational official responsible for the system including a current address and phone number shall be assessed 10 points.

(b) A water system project constructed without proper plan approval shall be assessed 1 to 50 points based on an evaluation of the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad). The points assessed shall remain on record for a period of one year.

(2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.

(3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.

(4) Sampling Site Plans:

(a) A water system which does not have an adequate bacteriological sampling site plan shall be assessed 5 points.

(b) A water system which does not have a lead/copper sampling site plan shall be assessed 10 points.

(5) Customer Complaint:

(a) 1 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:

(i) Turbidity;

(ii) Pressure;

(iii) Taste and Odor;

(iv) Sickness (water suspected); and

(v) Waterborne Disease Outbreak (R309-104-9).

(vi) Periods of Water Outage

(b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.

(c) In the case of a documented waterborne disease outbreak the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.

(d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Executive Secretary and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.

(6) Agency Directives - When a directive consistent with the authority of the Drinking Water Board is not complied with 1 to 100 points may be assessed to a water system. Agency directives include but are not limited to the following:

(a) Administrative Orders;

(b) Rule defined action;

(c) Rule defined compliance schedule;

(d) Variance/Exemption requirements; and

(e) Bilateral Compliance Agreement.

Points shall be assessed based upon the severity of the non-compliance, the threat to public health and the underlying basis for the original directive.

(7) Data Falsification - The Executive Secretary may assess a water system points for data falsification. The water system may be assessed 1 to 50 points for each occurrence based upon:

(a) the severity of the falsification;

(b) the threat to public health;

(c) the intent of the water system personnel; and

(d) the type of falsification.

(i) Reports only good data

(ii) Doctored results from the laboratory

(iii) Non-valid sample

Data reported to the Executive Secretary includes but is not limited to Water Treatment Plant Reports, Chlorination Reports, bacteriological and chemical analyses, and Annual Reports.

R309-150-11. Reporting and Record Maintenance Issues.

Points may be assessed for failure to provide required reports to the Executive Secretary by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report 10 points shall be assessed.

(b) For each failure to report the monthly chlorination report 10 points shall be assessed.

(2) Annual Reports - For failure to provide the annual report 2 points shall be assessed.

KEY: drinking water, environmental protection, water system rating, administrative procedure

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Notice of Continuation August 10, 2000 63-46b-4

R313. Environmental Quality, Radiation Control.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the licensing of radioactive material. This rule also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to these rules, that they may be individually subject to Executive Secretary enforcement action for violation of Section R313-19-5.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-19-2. General.

(1) A person shall not receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to Rules R313-21 or R313-22 or as otherwise provided in Rule R313-19.

(2) In addition to the requirements of Rules R313-19, R313-21 or R313-22, all licensees are subject to the requirements of Rules R313-12, R313-15, and R313-18. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of Rule R313-34, licensees engaged in industrial radiographic operations are subject to the requirements of Rule R313-36, licensees using radionuclides in the healing arts are subject to the requirements of Rule R313-32, licensees engaged in land disposal of radioactive material are subject to the requirements of Rule R313-25, and licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Rule R313-38.

R313-19-5. Deliberate Misconduct.

(1) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation of any license issued by the Executive Secretary; or

(b) Deliberately submit to the Executive Secretary, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Executive Secretary.

(2) A person who violates Subsections R313-19-5(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-19-5(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any license issued by the Executive Secretary; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing,

tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in Subsections R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(ii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1) or the general license provided in Section R313-19-30.

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) and (iii) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 C.F.R. Part 32 or by the Executive Secretary pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 C.F.R. Part 31.5 is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns the radioactive material. This exemption does not apply for radium-226.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than

the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to the effective date of these rules.

(B) Lock illuminators containing not more than 15 millicuries (555.0 MBq) of tritium or not more than two millicuries (74.0 MBq) of promethium-147 installed in automobile locks. The levels of radiation from each lock illuminator containing promethium-147 will not exceed one millirad (10 uGy) per hour at one centimeter from any surface when measured through 50 milligrams per square centimeter of absorber.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part.

(D) Automobile shift quadrants containing not more than 25 millicuries (925 MBq) of tritium.

(E) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas.

(F) Thermostat dials and pointers containing not more than 25 millicuries (925.0 MBq) of tritium per thermostat.

(G) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(H) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(H), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(I) Spark gap irradiators containing not more than one microcurie (37.0 kBq) of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least three gallons (11.4 liters) per hour.

(ii) Self-luminous products containing radioactive material.

(A) Tritium, krypton-85 or promethium-147. Except for persons who manufacture, process or produce self-luminous products containing tritium, krypton-85 or promethium-147, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 32.22, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in Subsection R313-19-13(2)(c)(ii) does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.

(B) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, provided that detectors containing radioactive material shall have been manufactured, imported, or transferred in accordance

with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 32.26, or a Licensing State pursuant to Subsection R313-22-75(3) or equivalent requirements, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

(B) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under Subsection R313-19-13(2)(c)(iii)(A), provided that the device is labeled in accordance with the specific license authorizing distribution of the general licensed device, and provided further that they meet the requirements of Subsection R313-22-75(3).

(C) Gas and aerosol detectors containing naturally occurring and accelerator-produced radioactive material (NARM) previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under Subsection R313-19-13(2)(c)(iii)(A), provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of Subsection R313-22-75(3).

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv)(B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Resins containing scandium-46 and designed for sand consolidation in oil wells. A person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. The resins shall have been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the Executive Secretary or an Agreement State to the manufacturer of resins pursuant to licensing requirements equivalent to those in 10 C.F.R. Part 32.16 and 32.17. This exemption does not authorize the manufacture of any resins containing scandium-46.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R313-19-20. Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in Rule R313-21 are effective without the filing of applications with the Executive Secretary or the issuance of licensing documents to the particular persons, although the filing of a registration certificate with the Executive Secretary may be required by the particular general license. The general licensee is subject to the other applicable portions of these rules and limitations of the general license.

(2) Specific licenses require the submission of an application to the Executive Secretary and the issuance of a licensing document by the Executive Secretary. The licensee is subject to applicable portions of these rules as well as limitations specified in the licensing document.

R313-19-25. Prelicensing Inspection.

The Executive Secretary may verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a license and whether special conditions should be attached thereto by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant. Such visits may be made by representatives of the Board or the Executive Secretary.

R313-19-30. Reciprocal Recognition of Licenses.

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state, except in areas of exclusive federal jurisdiction, for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Executive Secretary in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Executive Secretary, obtain permission to proceed sooner. The Executive Secretary may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in Subsection R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which

may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Executive Secretary may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in Subsection R313-19-30(1) except by transfer to a person:

(i) specifically licensed by the Executive Secretary or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material, or

(ii) exempt from the requirements for a license for material under Subsection R313-19-13(2)(a).

(2) Notwithstanding the provisions of Subsection R313-19-30(1), a person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in Subsection R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Executive Secretary within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission, a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in Subsection R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Executive Secretary may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or the environment.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Executive Secretary.

(2) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Executive Secretary shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Executive Secretary, and shall give his consent in writing.

(3) Persons licensed by the Executive Secretary pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Executive Secretary in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Executive Secretary in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 U.S.C.101(14), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 U.S.C.101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Executive Secretary. The licensee may change the approved plan without the Executive Secretary's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Executive Secretary and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Executive Secretary.

R313-19-41. Transfer of Material.

(1) Licensees shall not transfer radioactive material except as authorized pursuant to Section R313-19-41.

(2) Except as otherwise provided in the license and subject to the provisions of Subsections R313-19-41(3) and (4), licensees may transfer radioactive material:

(a) to the Executive Secretary, if prior approval from the Executive Secretary has been received;

(b) to the U.S. Department of Energy;

(c) to persons exempt from the rules in Rule R313-19 to the extent permitted under the exemption;

(d) to persons authorized to receive the material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a person otherwise authorized to receive the material by the federal government or an agency thereof, the Executive Secretary, an Agreement State or a Licensing State; or

(e) as otherwise authorized by the Executive Secretary in writing.

(3) Before transferring radioactive material to a specific licensee of the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by Subsection R313-19-41(3) are acceptable:

(a) the transferor may possess, and read a current copy of the transferee's specific license or registration certificate;

(b) the transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days;

(d) the transferor may obtain other information compiled by a reporting service from official records of the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) when none of the methods of verification described in Subsection R313-19-41(4) are readily available or when a transferor desires to verify that information received by one of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of Section R313-19-100.

R313-19-50. Reporting Requirements.

(1) Licensees shall notify the Executive Secretary as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits. Events may include fires, explosions, toxic gas releases, etc.

(2) The following events involving licensed material require notification of the Executive Secretary by the licensee within 24 hours:

(a) an unplanned contamination event that:

(i) requires access to the contamination area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2000), which is incorporated by reference, for the material; and

(iii) has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination; or

(b) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required by rule or license condition to be available and operable; and

(iii) no redundant equipment is available and operable to perform the required safety function; or

(c) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(d) an unplanned fire or explosion damaging licensed material or a device, container, or equipment containing licensed material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2000), which is incorporated by reference, for the material; and

(ii) the damage affects the integrity of the licensed material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of Section R313-19-50 must be made as follows:

(a) licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Executive Secretary. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the radionuclides, quantities, and chemical and physical form of the licensed material involved; and

(v) available personnel radiation exposure data.

(b) Written report. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Executive Secretary. The report shall include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the radionuclides, quantities, and chemical and physical form of the licensed material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and results of evaluations or assessments; and

(vi) the extent of exposure of individuals to radiation or radioactive materials without identification of individuals by name.

R313-19-61. Modification, Revocation, and Termination of Licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to the Act, or by reason of rules, and orders issued by the Executive Secretary.

(2) Licenses may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by the application or statement of fact or any report, record, or inspection or other means which would warrant the Executive Secretary to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or of the license, or of any rule, or order of the Executive Secretary.

(3) Administrative reviews, modifications, revocations or terminations of licenses will be in accordance with Title 19, Chapter 3.

(4) The Executive Secretary may terminate a specific license upon written request submitted by the licensee to the Executive Secretary.

R313-19-70. Exempt Concentrations of Radioactive Materials.

Refer to Subsection R313-19-13(2)(a)

TABLE

Element (Atomic Number)	Radionuclide	Column I Concentration Material Normally Used As Gas (uCi/ml)	Column II Concentration Liquid (uCi/ml) Solid (uCi/g)
Antimony (51)	Sb-122		3 E-4
	Sb-124		2 E-4
	Sb-125		1 E-3
Argon (18)	Ar-37	1 E-3	
	Ar-41	4 E-7	
Arsenic (33)	As-73		5 E-3
	As-74		5 E-4
	As-76		2 E-4
	As-77		8 E-4
Barium (56)	Ba-131		2 E-3
	Ba-140		3 E-4
Beryllium (4)	Be-7		2 E-2
Bismuth (83)	Bi-206		4 E-4
Bromine (35)	Br-82	4 E-7	3 E-3
Cadmium (48)	Cd-109		2 E-3
	Cd-115m		3 E-4
	Cd-115		3 E-4
Calcium (20)	Ca-45		9 E-5
	Ca-47		5 E-4
Carbon (6)	C-14	1 E-6	8 E-3
Cerium (58)	Ce-141		9 E-4
	Ce-143		4 E-4
	Ce-144		1 E-4
Cesium (55)	Cs-131		2 E-2
	Cs-134m		6 E-2
	Cs-134		9 E-5
Chlorine (17)	Cl-38	9 E-7	4 E-3
Chromium (24)	Cr-51		2 E-2
Cobalt (27)	Co-57		5 E-3
	Co-58		1 E-3
	Co-60		5 E-4
Copper (29)	Cu-64		3 E-3
Dysprosium (66)	Dy-165		4 E-3
	Dy-166		4 E-4
Erbium (68)	Er-169		9 E-4
	Er-171		1 E-3
Europium (63)	Eu-152 (T = 9.2 h)		6 E-4
	Eu-155		2 E-3
Fluorine (9)	F-18	2 E-6	8 E-3
Gadolinium (64)	Gd-153		2 E-3
	Gd-159		8 E-4
Gallium (31)	Ga-72		4 E-4
Germanium (32)	Ge-71		2 E-2
Gold (79)	Au-196		2 E-3
	Au-198		5 E-4
	Au-199		2 E-3
Hafnium (72)	Hf-181		7 E-4
Hydrogen (1)	H-3	5 E-6	3 E-2
Indium (49)	In-113m		1 E-2
	In-114m		2 E-4
Iodine (53)	I-126	3 E-9	2 E-5
	I-131	3 E-9	2 E-5
	I-132	8 E-8	6 E-4
	I-133	1 E-8	7 E-5
	I-134	2 E-7	1 E-3
Iridium (77)	Ir-190		2 E-3
	Ir-192		4 E-4
	Ir-194		3 E-4
Iron (26)	Fe-55		8 E-3
	Fe-59		6 E-4
Krypton (36)	Kr-85m	1 E-6	
	Kr-85	3 E-6	
Lanthanum (57)	La-140		2 E-4
Lead (82)	Pb-203		4 E-3
Lutetium (71)	Lu-177		1 E-3
Manganese (25)	Mn-52		3 E-4
	Mn-54		1 E-3
	Mn-56		1 E-3
Mercury (80)	Hg-197m		2 E-3
	Hg-197		3 E-3
	Hg-203		2 E-4
Molybdenum (42)	Mo-99		2 E-3
Neodymium (60)	Nd-147		6 E-4
	Nd-149		3 E-3
Nickel (28)	Ni-65		1 E-3
Niobium (Columbium) (41)	Nb-95		1 E-3
	Nb-97		9 E-3
Osmium (76)	Os-185		7 E-4
	Os-191m		3 E-2
	Os-191		2 E-3
	Os-193		6 E-4
Palladium (46)	Pd-103		3 E-3
	Pd-109		9 E-4
Phosphorus (15)	P-32		2 E-4
Platinum (78)	Pt-191		1 E-3
	Pt-193m		1 E-2
	Pt-197m		1 E-2
	Pt-197		1 E-3
Potassium (19)	K-42		3 E-3
Praseodymium (59)	Pr-142		3 E-4
	Pr-143		5 E-4
Promethium (61)	Pm-147		2 E-3
	Pm-149		4 E-3
Rhenium (75)	Re-183		6 E-4
	Re-186		9 E-3
	Re-188		6 E-4
Rhodium (45)	Rh-103m		1 E-1
	Rh-105		1 E-3
Rubidium (37)	Rb-86		7 E-4
Ruthenium (44)	Ru-97		4 E-4
	Ru-103		8 E-4
	Ru-105		1 E-3
	Ru-106		1 E-4
Samarium (62)	Sm-153		8 E-4
Scandium (21)	Sc-46		4 E-4
	Sc-47		9 E-4
	Sc-48		3 E-4
Selenium (34)	Se-75		3 E-3
Silicon (14)	Si-31		9 E-3
Silver (47)	Ag-105		1 E-3
	Ag-110m		3 E-4
	Ag-111		4 E-4
Sodium (11)	Na-24		2 E-3
Strontium (38)	Sr-85		1 E-4
	Sr-89		1 E-4
	Sr-91		7 E-4

	Sr-92		7 E-4
Sulfur (16)	S-35	9 E-8	6 E-4
Tantalum (73)	Ta-182		4 E-4
Technetium (43)	Tc-96m		1 E-1
	Tc-96		1 E-3
Tellurium (52)	Te-125m		2 E-3
	Te-127m		6 E-4
	Te-127		3 E-3
	Te-129m		3 E-4
	Te-131m		6 E-4
	Te-132		3 E-4
Terbium (65)	Tb-160		4 E-4
Thallium (81)	Tl-200		4 E-3
	Tl-201		3 E-3
	Tl-202		1 E-3
	Tl-204		1 E-3
Thulium (69)	Tm-170		5 E-4
	Tm-171		5 E-3
Tin (50)	Sn-113		9 E-4
	Sn-125		2 E-4
Tungsten (Wolfram)(74)	W-181		4 E-3
	W-187		7 E-4
Vanadium (23)	V-48		3 E-4
Xenon (54)	Xe-131m	4 E-6	
	Xe-133	3 E-6	
	Xe-135	1 E-6	
Ytterbium (70)	Yb-175		1 E-3
Yttrium (39)	Y-90		2 E-4
	Y-91m		3 E-2
	Y-91		3 E-4
	Y-92		6 E-4
	Y-93		3 E-4
Zinc (30)	Zn-65		1 E-3
	Zn-69m		7 E-4
	Zn-69		2 E-2
Zirconium (40)	Zr-95		6 E-4
	Zr-97		2 E-4
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years		1 E-10	1 E-6

(1) In expressing the concentrations in Section R313-19-70, the activity stated is that of the parent radionuclide and takes into account the radioactive decay products, because many radionuclides disintegrate into radionuclides which are also radioactive.

(2) For purposes of Subsection R313-19-13(2)(a) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radionuclide in the product the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section R313-19-70 for the specific radionuclide when not in combination. The sum of the ratios may not exceed one or unity.

(3) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-71. Exempt Quantities of Radioactive Materials.

Refer to Subsection R313-19-13(2)(b)

TABLE

RADIOACTIVE MATERIAL	MICROCURIES
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au 195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1

Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium 131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material.	0.1

(1) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.4, 71.10, 71.12, 71.13(a) and (b) through 71.16, 71.47, 71.81, 71.85 through 71.89, 71.97 (1998), and Appendix A to part 71 are incorporated by reference with the following clarifications or exceptions:

(1) The substitution of the following:

(a) "Issued by the Executive Secretary" for reference to "issued by the Commission" in 10 CFR 71.4;

(b) "Licensee" for reference to "licensee of the Commission";

(c) "Subsection R313-19-100(3)" for reference to "10 CFR 71.5";

(d) "Subsection R313-15-906(5)" for reference to "10 CFR 20.1906(e)";

(e) "Section R313-15-502" for reference to "10 CFR 20.1502"; and

(f) "Utah" for reference to "the United States" in 10 CFR 71.10(b)(3);

(2) The exclusion of the following:

(a) "close reflection by water" and "optimum interspersed hydrogenous moderation" in 10 CFR 71.4;

(b) "10 CFR 71.12(b)", "10 CFR 71.14(b)", and "10 CFR 71.16(b)"; and

(c) "subpart H" in 10 CFR 71.12(c)(2), 71.14(c)(2), 71.16(d)(2), and 71.81;

(3) Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR 170 through 189 (1998) appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR 173.1 through 173.13, 173.21 through 173.40, and 173.401 through 173.476;

(B) Marking and labeling--49 CFR 172.300 through 172.338, 172.400 through 172.407, 172.436 through 172.440, and 172.400 through 172.450;

(C) Placarding--49 CFR 172.500 through 172.560 and Appendices B and C;

(D) Accident reporting--49 CFR 171.15 and 171.16;

(E) Shipping papers and emergency information--49 CFR 172.200 through 172.205 and 172.600 through 172.606;

(F) Hazardous material employee training--49 CFR 172.700 through 172.704; and

(G) Hazardous material shipper/carrier registration--49 CFR 107.601 through 107.620.

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR 174.1 through 174.86 and 174.700 through 174.750;

(B) Air--49 CFR 175;

(C) Vessel--49 CFR 176.1 through 176.99 and 176.700 through 176.715; and

(D) Public Highway--49 CFR 177 and 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards

and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, wavier, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Executive Secretary.

KEY: license, reciprocity, transportation, exemptions
January 26, 2001 19-3-104
Notice of Continuation May 1, 1997 19-3-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions shall include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) The following wastes are prohibited from disposal at a solid waste disposal facility.

(a) Lead acid batteries must be recycled and otherwise managed in accordance with Sections 19-6-601 through 607.

(b) Used oil must be recycled and otherwise managed in accordance with Rule R315-15.

R315-315-2. Asbestos Waste.

(1) Asbestos waste shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Sections R307-1-4.12 and R307-1-8 and 40 CFR Part 61, Subpart M, 1995 ed.

(2) No transporter or disposal facility shall accept friable asbestos waste unless the waste has been adequately wetted and containerized.

(a) Asbestos waste is adequately wetted when its moisture content prevents fiber release.

(b) Asbestos waste is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Asbestos waste slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. The Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All asbestos containers shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold asbestos.

(3) Disposal of Asbestos Waste.

(a) Upon entering the disposal site, the transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days.

(b) Upon the receipt of the asbestos waste, the landfill operator shall require that the vehicles that have transported asbestos waste be marked with warning signs as specified in 40 CFR Part 61.149(d)(1)(iii), 1995 ed., which is adopted and incorporated by reference. The operator shall also inspect the loads to verify that the asbestos waste is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste material which prevents fiber release prior to compacting the waste in the landfill.

(c) During waste deposition and covering, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only asbestos waste, or may dispose of asbestos at the working face of the landfill;

(ii) shall place asbestos containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours, shall completely cover the containerized waste with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no asbestos. If the waste is improperly containerized, it must be completely covered immediately with six inches of material containing no asbestos; and

(iv) shall not compact asbestos containing material until completely covered with a minimum of six inches of material containing no asbestos.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 200 feet along the perimeter of the sections where asbestos waste is deposited that comply with the requirements of 40 CFR Part 61.154(b), 1995 ed., which is adopted and incorporated by reference; and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted Class III ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) No water treatment plant sludge, digested waste water treatment plant sludge, or septage containing free liquids may be disposed in any landfill with other solid waste.

(2) Water treatment plant sludge, digested waste water treatment plant sludge, or septage containing no free liquids may be placed at or near the bottom of the landfill working face and covered with other solid waste or other suitable cover

material.

(3) Disposal of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

Dead animals received at the facility shall be deposited onto the working face at or near the bottom of the cell with other solid waste, or into a separate disposal trench provided they are covered daily with a minimum of six inches of earth to minimize odors and the propagation and harborage of rodents or insects.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following waste containing PCBs may be disposed in a permitted Class I, II, III, IV, or V Landfill or in a permitted incinerator or energy recovery facility:

(a) waste containing PCBs at concentrations less than 50 ppm;

(b) PCB household waste as defined by 40 CFR 761.3 (1998); and

(c) small quantities of intact, non-leaking small PCB capacitors from fluorescent lights.

(3) Waste containing PCBs at concentrations of 50 ppm, or higher, are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320 except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher:

(i) an existing facility, as defined by Subsection R315-301-2(21), that is permitted under 40 CFR 761.70 or .75 (1998) to accept waste containing PCBs; or

(ii) a new facility, as defined by Subsection R315-301-2(47), that is permitted under 40 CFR 761.70, .71, .72, or .75 (1998) to accept waste containing PCBs, which facility must also receive approval under Rules R315-301 through 320; or

(b) when approved by the Executive Secretary, the following wastes may be disposed at a permitted landfill or may be disposed at an incinerator that meets the requirements of Subsection R315-315-7(3)(a):

(i) PCB bulk products regulated by 40 CFR 761.62(b) (1998);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3 (1998);

(iii) drained PCB articles as defined by 40 CFR 761.3 (1998);

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A) (1998);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii) (1998); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2) (1998).

R315-315-8. Petroleum Contaminated Soils.

(1) Terms used in Section R315-315-8 are defined in Section R315-301-2. In addition, for the purpose of Section R315-315-8, the following definition applies: "Petroleum contaminated soils" means soils that have been contaminated with either diesel or gasoline or both.

(2) Petroleum contaminated soils that are not a hazardous waste may be accepted for disposal at a:

(a) Class I Landfill;

(b) Class II Landfill;

(c) Class III Landfill; or

(d) Class V Landfill, except for a Class V Landfill that is permitted to accept exclusively construction/demolition waste.

(3) Petroleum contaminated soils containing the following constituents at or below the following levels and are otherwise not a hazardous waste, may be accepted for disposal at a Class IV Landfill:

(a) Benzene, 0.03 mg/kg;

(b) Ethylbenzene, 13 mg/kg;

(c) Toluene, 12 mg/kg; and

(d) Xylenes, 200 mg/kg.

R315-315-9. Waste Asphalt.

(1) The preferred management of waste asphalt is recycling. Recycling of waste asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

(2) If waste asphalt is disposed, it shall be disposed in a permitted landfill.

KEY: solid waste management, waste disposal
January 5, 2001 19-6-105
Notice of Continuation April 28, 1998

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Absorption system" means a device constructed under the ground surface to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

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

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.8 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.9 "Division" means the Utah State Division of Water Quality.

1.10 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.11 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.12 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.13 "Individual wastewater disposal system" means, for the purposes of Section 19-5-102(7), a system for underground disposal of domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorptions system.

1.14 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.15 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.16 "Large underground wastewater disposal system" means the same type of device as described under 1.1.13 above, except that it is designed to handle more than 5,000 gallons per day of domestic wastewater which originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other wastewater disposal system not covered in 1.1.13 above. The Board controls the installation of such systems.

1.17 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.18 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.19 "Polished Secondary Treatment" means a treatment process that can produce an effluent meeting or exceeding the following standards:

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 15 mg/l, nor shall the arithmetic mean exceed 20 mg/l during any 7-day period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 10 mg/l, nor shall the arithmetic mean exceed 12 mg/l during any 7-day period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 200 per 100 ml or 20 per 100 ml respectively, nor shall the geometric mean exceed 250 per 100 ml or 25 per 100 ml respectively during any 7-day period.

D. The effluent pH values shall be maintained within the limits of 6.5 to 9.0.

1.20 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.21 "Seepage trench" means a modified seepage pit, an absorption system consisting of trenches filled with coarse filter material into which septic tank effluent is discharged.

1.22 "Seepage pit" means an absorption system consisting of a covered pit into which effluent is discharged.

1.23 "Septic tank" means a water-tight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an underground absorption system meeting the requirements of these regulations.

1.24 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.25 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.26 "SS" means suspended solids.

1.27 "Subsurface absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which effluent is discharged through specifically designed underground pipes.

1.28 "Subsurface absorption field" means an absorption system consisting of a series of covered, gravel-filled trenches into which effluent is discharged through specifically designed underground pipes.

1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.30 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.31 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.32 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. Individual Wastewater Disposal Systems. Construction plans and specifications for individual wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for individual wastewater disposal systems adopted by the Water Quality Board. Compliance with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Deadline For Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State on the effective date of these regulations shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards) as soon as practicable but not later than June 30, 1983, except that the Board may, on a case-by-case basis, allow an extension to the deadline for compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Deadline For Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l

during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period. Exceptions to this requirement may be allowed by the Board on a case-by-case basis where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed on a case-by-case basis where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above on a case-by-case basis where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow on a case-by-case basis that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions on a case-by-case basis to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Submittal of Reuse Project Plan. If a person intends to reuse or provide for the reuse of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.6, a Reuse Project Plan must be submitted to the Division of Water Quality. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2 of this rule. The plan must contain the following information. At least items A and B should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the source, quantity, quality, and use of the treated wastewater to be delivered, the location of the reuse site, and how the requirements of this rule would be met.

B. A description of the water rights for the use of the treated effluent. This will include evidence that the State Engineer has been notified and has agreed that the treatment entity has the right to use the water for the intended use.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to another entity for distribution and use, a copy of the contract covering how the requirements of this rule will be met.

4.3 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure.

3. Irrigation of food crops where the applied reclaimed water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 4.4.A below.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. The secondary treatment process should produce effluent in which both the BOD and total suspended solids concentrations do not exceed 25 mg/l as a monthly mean.

2. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite or approved membrane processes.

3. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by daily composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Executive Secretary that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median fecal coliform concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 14 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Executive Secretary that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Executive Secretary. A 1 mg/l total chlorine residual is required after disinfection and before the reclaimed water goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than 5 minutes.

2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Executive Secretary. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require.

4.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied reclaimed water is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. Secondary treatment should produce effluent in which both the BOD and total suspended solids do not exceed 25 mg/l as a monthly mean.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before

use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by weekly composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l.

3. The weekly median fecal coliform concentration shall not exceed 200 organisms/100 ml, as determined from daily grab samples, and no sample shall exceed 800 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Executive Secretary, the sampling frequency to determine compliance with water quality limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for fecal coliform, TSS and pH.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 300 feet from areas intended for public access. This distance may be reduced or increased by the Executive Secretary, based on the type of spray irrigation equipment used and other factors. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

4.5 Records. Records of volume and quality of treated wastewater delivered for reuse shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on water delivered for reuse may be submitted on the same form.

4.6 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

4.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

4.8 Reclaimed Water Distribution Systems. Where reclaimed water is to be provided by pressure pipeline, unless contained in surface pipes wholly on private property and for agricultural purposes, the following requirements will apply. The requirements will apply to all new systems constructed after May 4, 1998, and it is recommended that the accessible portions of existing reclaimed water distribution systems be retrofitted to comply with these rules. Requirements for secondary irrigation systems proposed for conversion from use of non-reclaimed water to use with reclaimed water will be considered on an individual basis considering protection of public health and the environment. Any person or agency that is constructing all or part of the distribution system must obtain a construction permit from the Division of Water Quality prior to beginning construction.

A. Distribution Lines

1. Minimum Separation.

a. Horizontal Separation. Reclaimed water main distribution lines parallel to potable (culinary) water lines shall be installed at least ten feet horizontally from the potable water lines. Reclaimed water main distribution lines parallel to sanitary sewer lines shall be installed at least ten feet horizontally from the sanitary sewer line if the sanitary sewer line is located above the reclaimed water main and three feet horizontally from the sanitary sewer line if the sanitary sewer line is located below the reclaimed water main.

b. Vertical Separation. At crossings of reclaimed water main distribution lines with potable water lines and sanitary sewer lines the order of the lines from lowest in elevation to highest should be; sanitary sewer line, reclaimed water line, and potable water line. A minimum 18 inches vertical separation between these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the reclaimed water line joints will be equidistant and as far as possible from the water line joints and the sewer line joints. If the reclaimed water line must cross above the potable water line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the potable water line from the ground surface. If the reclaimed water line must cross below the sanitary sewer line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the reclaimed water line from the ground surface.

c. Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in R317-3 for protection of potable water lines. Existing pressure lines carrying reclaimed water shall not be required to meet these requirements.

2. Depth of Installation. To provide protection of the installed pipeline, reclaimed water lines should be installed with a minimum depth of bury of three feet.

3. Reclaimed Water Pipe Identification.

a. General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 522 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape is recommended. Locating wire along the pipe is also recommended.

b. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Water-- Do Not Drink". The overall width of the tape shall be at least three inches. Identification tape shall be installed 12 inches above the transmission pipe longitudinally and shall be centered.

4. Conversion of existing water lines. Existing water lines that are being converted to use with reclaimed water shall first be accurately located and comply with leak test standards in accordance with AWWA Standard C-600 and in coordination with regulatory agencies. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current State cross connection rules and requirements (R309-102-5), and must meet minimum separation requirements in section 4.8.A.1 of this rule above. If the existing lines meet approval of the water supplier and the Division, the lines shall be approved for reclaimed water distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of this rule.

5. Valve Boxes and Other Surface Identification. All valve covers shall be of non-interchangeable shape with potable water covers, and shall have an inscription cast on the top surface stating "Reclaimed Water". Valve boxes shall meet AWWA standards. All above ground facilities shall be consistently color coded (purple, Pantone 512) and marked to differentiate reclaimed water facilities from potable water facilities.

6. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, the Division of Water Quality shall be consulted on acceptable discharge or runoff locations.

B. Storage. If storage or impoundment of reclaimed water is provided, the following requirements apply:

1. Fencing. For Type I effluent, no fencing is required by this rule, but may be required by local laws or ordinances. For Type II effluent, see R317-1-4.4.D.4 above.

2. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Section 4.8.D.6 below. Signs shall be posted on the surrounding fence at minimum 500 foot intervals and at the entrance of each facility. If there is no fence, signs shall be located as a minimum on each side of the facility or at minimum 250 foot intervals or at all accessible points.

C. Pumping Facilities.

1. Marking. All exposed and above ground piping, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Reclaimed Water - Do Not Drink." In a fenced pump station area, signs shall be posted on the fence on all sides.

2. Sealing Water. Any potable water used as seal water for reclaimed water pumps seals shall be protected from backflow with a reduced pressure principle device.

D. Other Requirements.

1. Backflow Protection. In no case shall a connection be made between the potable and reclaimed water system. If it is necessary to put potable water into the reclaimed distribution system, an approved air gap must be provided to protect the potable water system. A reduced pressure principle device may be used only when approved by the Division of Water Quality, the local health department, and the potable water supplier.

2. Drinking Fountains. Drinking fountains and other public facilities shall be placed out of any spray irrigation area in which reclaimed water is used, or shall be otherwise protected from contact with the reclaimed water. Exterior drinking fountains and other public facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.

3. Hose Bibs. Hose bibs on reclaimed water systems in public areas and at individual residences shall be prohibited. In public, non-residential areas, replacement of hose bibs with quick couplers is recommended.

4. Equipment and Facilities. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps which have been or may be used with reclaimed water, and could be interchangeably used with potable water or sewage, shall be cleaned and disinfected before or after use as appropriate. This disinfection and cleaning shall ensure the protection of the public health in the event of any subsequent use.

5. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, and temporary construction services. The labels shall indicate the system contains reclaimed water that is unsafe to drink.

6. Warning signs. Where reclaimed water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, as a minimum, 1/2 inch purple letters (Pantone 512) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Water - Do Not Drink". The signs shall include the international symbol for Do Not Drink.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant

limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503, and as authorized by the local health authority.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. Municipal Wastewater Facility Planning and Compliance Criteria.

7.1 Planning and Compliance Requirements.

A. Each wastewater treatment entity in Utah (which does not have an approved, current facility plan) is required to develop, as soon as practicable, but no later than December 31, 1985, a Facilities Management and Financial Plan (FMFP) which will assure that sewerage works construction, operation, maintenance, and replacement needs will be met in a timely manner. A general outline of an FMFP is provided as an attachment. These plans are prerequisite to issuance of construction permits for new or significantly modified wastewater treatment facilities and for certification of new or renewed NPDES permits.

B. The FMFP must include an evaluation of alternatives in sufficient detail to determine the most cost effective and environmentally sound treatment strategy. The strategy must include a timely progression of interim measures which are planned to result in effective wastewater treatment for existing and projected population levels. The FMFP should contain an implementation schedule which outlines the specific measures to be taken which are developed to achieve effective wastewater management as soon as possible. Measurable, continuing progress toward this goal must be achievable. Public entities are encouraged to begin implementing their FMFP as soon as possible.

C. The FMFP must describe a financial plan to pay for all project costs, including replacement costs. This financial plan should include an "enterprise" fund which is separate from the general fund. The enterprise fund will account for user charges and other assessments collected to pay for all necessary operation and maintenance costs, debt service, and capital replacement. The plan should consider budgeting an allowance for eventual replacement of the entire facility at the end of the design life as well as replacement of major components in the interim.

D. The FMFP must address optimizing the operation and maintenance of existing facilities.

E. The FMFP must be consistent with all applicable State and Federal Laws and Regulations regarding pollution control and financial management of publicly owned wastewater treatment facilities. Specific regulatory compliance dates may only be extended on the basis of approval of such a plan.

7.2 Facility Plans. Existing wastewater treatment facility plans for projects awaiting EPA funding for design and construction should be updated where necessary to include all elements of an approvable FMFP (above) and elements identified by EPA in current guidance for an approvable facility plan. Updated facility plans shall be submitted by December 31, 1985.

7.3 Planning Deadline Provisions. The deadline for submission of FMFP's or updated facility plans shall be December 31, 1985. Extensions to this deadline may be granted on a case-by-case basis by the Board if it is demonstrated that the imposition of the deadline will cause financial hardship to the entity; if the plan cannot, despite good faith efforts, be completed by this date; or if the preparation and approval process would likely cause delays in projects already planned and in the process of implementation. A schedule and plan for the preparation of the FMFP or facility plan must be submitted with any extension request.

7.4 Scope of Planning Necessary. In order to assure that FMFP's and facility plans are properly scoped wastewater treatment entities should first determine the current design life of existing wastewater treatment facilities.

If the current design life is five years or less, according to responsible engineering judgement, entities should prepare FMFP's or facility plans with sufficient detail to permit preparation of detailed design so that construction of necessary wastewater facilities may be completed as soon as possible. Short-term and long-term facilities needs should be addressed. A general outline of such a plan is presented as an attachment. Facility plans, prepared in anticipation of an EPA Construction Grant, must be prepared in accordance with current EPA guidance.

If the current design life exceeds five years, long-term wastewater facilities needs and a financial plan to address these needs, prepared in a professional manner, may be an acceptable level of planning. These facilities needs would generally be established at a very preliminary level in recognition of the fact that detailed plans have a useful life of approximately five years. However, the long-term facilities needs must be estimated so that financial plans can be implemented as necessary.

After a preliminary determination is made regarding the present design life of facilities, the staff of the Bureau of Water Pollution Control should be consulted to provide scoping recommendations. Design criteria, wastewater characteristics, demographics, other factors used to determine the present design life of facilities, and the proposed plan of study should be submitted to the staff before planning is initiated.

7.5 Extensions to the Implementation of Standards.

To permit the expeditious and orderly development of plans for a short and long term wastewater management strategy, the Board will consider temporary extensions to the deadlines for compliance with water quality standards, secondary treatment standards and polished secondary treatment standards where it is documented by the entity that justifiable reasons exist. Extensions may be considered for specific standards and time periods if the following conditions are met:

A. A Facilities Management and Financial Plan or a current Facility Plan has been prepared in accordance with policies noted above.

B. Existing and anticipated conditions will not pose a

health hazard.

C. The beneficial uses of affected state waters, as defined by R317-2, will not be seriously impaired by the discharge during the proposed extension.

D. Optimal operation and maintenance of existing facilities will be continued during the extension. Any time extension granted will require a treatment entity to conduct a detailed evaluation of the facility to identify and correct any operational and non-capital intensive deficiencies at the facility.

E. The FMFP or current facility plan must demonstrate that the entity will upgrade its wastewater treatment facility to meet the required standards in a timely manner. User charges and fees must be structured appropriately so that wastewater management facilities become self supporting.

7.6 Responsibility for Planning. Any wastewater treatment entity that is presently in compliance, yet has an identifiable need to plan for future expansion to accommodate growth but elects to wait for federal funds for construction, will make such election with full knowledge that should the capacity of the existing facilities be reached before new facilities are completed, a moratorium on new connections may be imposed and/or other enforcement actions may be taken. In such enforcement actions, the entity will not qualify for any special consideration, since the condition will be considered to have resulted as a matter of its choice.

7.7 Public Participation. The WPCC encourages entities to involve the affected public throughout the development of the Facility Plan or Facilities Management and Financial Plan. Since sewer users will be required to pay for debt retirement, operation and maintenance costs, connection fees, and contractor charges for service lateral hook-up, active citizen involvement is essential to assess public acceptance prior to bond elections and assure a responsive posture for local governments. The WPCC staff, as resources allow, will assist entities to develop and maintain effective public participation programs.

At least one public meeting should be held during early phases of the planning process before a recommended alternative is developed.

A public hearing should be held prior to the adoption of the Facility Plan or FMFP.

Adequate notification of public meetings, hearings, and actions in response to public participation should be provided.

A consensus of the communities' willingness to proceed with the plan should be developed through public meetings, hearings, referendums, bond elections, etc. and it should be documented in the Facility Plan or FMFP.

7.8 Staff Support. Upon request and as resources permit, the WPCC staff will provide technical assistance to help entities develop interim and long-range programs, construction schedules, FMFP's and Facility Plans. The staff will also provide information relative to securing financing for construction. Technical assistance would include reviews of documents submitted and meetings with city officials and their engineers to help scope the planning project, evaluate work plans, etc., in an effort to facilitate an expeditious approval process.

R317-1-8. Administrative Procedures.

8.1 Designation of Formal or Informal Proceedings. The following proceedings and actions are designated to be conducted either formally or informally as required by Utah Code Annotated Section 63-46b-4:

a. Issuance of construction permits shall be by informal procedures identified in R317-1, R317-2, R317-3 and R317-5.

b. Issuance of discharge permits shall be by informal procedures identified in R317-8.

c. Issuance of underground injection control permits shall be by informal procedures identified in R317-7.

d. Review of facility management and financial plans shall be by informal procedures identified in R317-7.

e. Notices of Violation and Orders are exempt under Utah Code Annotated Section 63-46b-1(2)(k). Appeals to the Committee of Notices of Violation and Orders shall be processed using formal procedures.

f. Appeals of issuances, denials, or conditions of construction permits, discharge permits and underground injection control permits shall be conducted formally.

g. Funding requests, insofar as they are covered by Utah Code Annotated Section 63-46b-1, shall be processed informally using procedures outlined in the Board's regulations, policies and guidelines.

h. Variance requests, exceptions, and other approvals etc. will be processed informally in accordance with the applicable provisions of the Wastewater Disposal Regulations.

8.2 Conversion of Hearings. At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

8.3 Rules for Conducting Formal and Informal Proceedings. Rules for conducting formal proceedings shall be as provided in Utah Code Annotated Sections 63-46b-3, and 63-46b-6 through 63-46b-13. In addition to the procedures referenced in paragraph 8.1 above, the procedures in Utah Code Annotated Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

8.4 Declaratory Orders. In accordance with the provisions of Utah Code Annotated Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Utah Code Annotated Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under paragraph 8.2 above. No declaratory orders will be issued in the circumstances described in Utah Code Annotated Section 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Utah Code Annotated Section 63-46b-21.

R317-1-9. Penalty Criteria for Civil Settlement Negotiations.

9.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the

law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

9.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

9.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

9.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment

rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

9.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

KEY: water pollution, waste disposal, industrial waste, effluent standards*
January 23, 2001 19-5
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-7. Underground Injection Control (UIC) Program.
R317-7-0. Effective Date and Applicability of Rules.

The effective date of these rules is January 19, 1983 (40 C.F.R. 147.2250). Class II wells are administered by the Division of Oil, Gas and Mining, whose primacy became effective October 8, 1982 (40 C.F.R. 147.2251).

R317-7-1. Incorporation By Reference.

1.1 40 C.F.R. 144.7, 144.13(d), 144.14, 144.16, 144.23(c), 144.32, 144.34, 144.36, 144.38, 144.39, 144.40, 144.41, 144.51(a)-(o) and (q), 144.52, 144.53, 144.54, 144.55, 144.60, 144.61, 144.62, 144.63, 144.64, 144.65, 144.66, 144.67, 144.68, 144.69, 144.70, and 144.87, July 1, 2000 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary".

B. "one quarter mile" is hereby replaced with "two miles".

1.2 40 C.F.R. 146.4, 146.6, 146.7, 146.8, 146.12, 146.13(d), 146.14, 146.32, 146.34, 146.61,146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, and 146.73, July 1, 2000 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary";

B. "one quarter (1/4) mile" and "one-fourth (1/4) mile" are each hereby replaced with "two miles".

1.3 40 C.F.R. Part 148, July 1, 2000 ed., is adopted and incorporated by reference with the exception that "Director" is hereby replaced with "Executive Secretary".

1.4 40 C.F.R. Part 261, July 1, 2000 ed., is adopted and incorporated by reference.

1.5 40 C.F.R. Part 141, July 1, 2000 ed., is adopted and incorporated by reference.

1.6 40 C.F.R. Part 136 Table 1B, July 1, 2000 ed., is adopted and incorporated by reference.

1.7 10 C.F.R. Part 20 Appendix b, Table 11 Column 2, January 1, 2000 ed., is adopted and incorporated by reference.

1.8 40 C.F.R. 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d) and (e); 124.8; 124.10(a)(1)ii, iii, and (a)(1)(V); 124.10(b), (c), (d), and (e); 124.11; 124.12(a); and 124.17(a) and (c), July 1, 2000 ed., are adopted and incorporated by reference with the exception that "Director" is hereby replaced by "Executive Secretary".

R317-7-2. Definitions.

2.1 "Abandoned Well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

2.2 "Application" means standard forms for applying for a permit, including any additions, revisions or modifications.

2.3 "Aquifer" means a geologic formation or any part thereof that is capable of yielding significant water to a well or spring.

2.4 "Area of Review" means the zone of endangering influence or fixed area radius determined in accordance with the provisions of 40 C.F.R. 146.6.

2.5 "Background Data" means the constituents or parameters and the concentrations or measurements which describe water quality and water quality variability prior to surface or subsurface discharge.

2.6 "Barrel" means 42 (U.S.) gallons at 60 degrees F and atmospheric pressure.

2.7 "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

2.8 "Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

2.9 "Catastrophic Collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

2.10 "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

2.11 "Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

2.12 "Confining Bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

2.13 "Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

2.14 "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

2.15 "Conventional Mine" means an open pit or underground excavation for the production of minerals.

2.16 "Disposal Well" means a well used for the disposal of fluids into a subsurface stratum.

2.17 "Drilling Mud" means mud of not less than 36 viscosity (A.P.I. Full Funnel Method) and a weight of not less than nine pounds per gallon.

2.18 "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

2.19 "Exempted Aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 40 C.F.R. 144.7.

2.20 "Existing Injection Well" means an "injection well" other than a "new injection well."

2.21 "Experimental Technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

2.22 "Fault" means a surface or zone of rock fracture along which there has been a displacement.

2.23 "Flow Rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

2.24 "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

2.25 "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

2.26 "Formation Fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

2.27 "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261.

2.28 "Groundwater" means water below the ground surface in a zone of saturation.

2.29 "Hazardous Waste" means a hazardous waste as defined in R315-2-3.

2.30 "Hazardous Waste Management Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

2.31 "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

2.32 "Injection Well" means a well into which fluids are being injected for subsurface emplacement of the fluids.

2.33 "Injection Zone" means a geological "formation," group of formations, or part of a formation receiving fluids through a well.

2.34 "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

2.35 "Monitoring Well" means a well used to measure groundwater levels and to obtain water samples for water quality analysis.

2.36 "New Injection Well" means an injection well which began injection after January 19, 1983.

2.37 "Packer" means a device lowered into a well to produce a fluid-tight seal within the casing.

2.38 "Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

2.39 "Plugging Record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

2.40 "Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

2.41 "Pressure" means the total load or force per unit area acting on a surface.

2.42 "Project" means a group of wells in a single operation.

2.43 "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 C.F.R. Part 20, Appendix B, Table II Column 2.

2.44 "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

2.45 "Septic system" means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

2.46 "Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

2.47 "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

2.48 "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

2.49 "Surface Casing" means the first string of well casing to be installed in the well.

2.50 "Total Dissolved Solids (TDS)" means the total residue (filterable) as determined by use of the method specified in 40 C.F.R. Part 136 Table 1B.

2.51 "Transferee" means the owner or operator receiving ownership and/or operational control of the well.

2.52 "Transferor" means the owner or operator transferring ownership and/or operational control of the well.

2.53 "Underground Injection" means a "well injection".

2.54 "Underground Sources of Drinking Water (USDW)" means an aquifer or its portion which:

A. Supplies any public water system, or which contains a sufficient quantity of ground water to supply a public water system; and

1. currently supplies drinking water for human consumption; or

2. contains fewer than 10,000 mg/l total dissolved solids (TDS); and

B. is not an exempted aquifer. (See Section 7-4).

2.55 "Well" means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

2.56 "Well Injection" means the subsurface emplacement

of fluids through a well.

2.57 "Well Monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

2.58 "Well Plug" means a watertight and gas-tight seal installed in a borehole or well to prevent movement of fluids.

2.59 "Well Stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes:

(1) surging;
(2) jetting;
(3) blasting;
(4) acidizing; and
(5) hydraulic fracturing.

R317-7-3. Classification of Injection Wells.

Injection wells are classified as follows:

3.1 Class I

A. Hazardous Waste Injection Wells: wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water;

B. Nonhazardous Injection Wells: other industrial and municipal waste disposal wells which inject nonhazardous fluids beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water; this category includes disposal wells operated in conjunction with uranium mining activities.

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within two miles of the well bore.

3.2 Class II. Wells which inject fluids:

A. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

B. for enhanced recovery of oil or natural gas; and

C. for storage of hydrocarbons which are liquid at standard temperature and pressure.

Class II injection wells are regulated by the Division of Oil, Gas and Mining under Oil and Gas Conservation General Rules, R649-5.

3.3 Class III. Wells which inject for extraction of minerals, including:

A. mining of sulfur by the Frasch process;

B. in situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V; and

C. solution mining of salts or potash.

3.4 Class IV

A. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within two miles of the well, contains an underground source of drinking water;

B. wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within two miles of the well, contains an underground source of drinking water;

C. wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 7-3.1(A) or 7-3.4(A) and (B) of these rules (e.g. wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted).

3.5 Class V. Injection wells not included in Classes I, II, III, or IV. Class V wells include:

A. air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

B. large capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons per day;

C. cooling water return flow wells used to inject water previously used for cooling;

D. drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

E. dry wells used for the injection of wastes into a subsurface formation;

F. recharge wells used to replenish the water in an aquifer;

G. salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

H. sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, whether what is injected is radioactive waste or not;

I. septic systems used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons per day;

J. subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

K. stopes leaching, geothermal and experimental wells;

L. brine disposal wells for halogen recovery processes;

M. injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; and

N. injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

O. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR Part 141 and Utah Public Drinking Water Rules R309-103). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

R317-7-4. Identification of USDW'S and Exempted Aquifers.

The Executive Secretary shall identify USDW's and exempt aquifers following the procedures and based on the requirements outlined in 40 C.F.R. 144.7 and 40 C.F.R. 146.4.

R317-7-5. Prohibition of Unauthorized Injection.

5.1 Any underground injection is prohibited except as authorized by permit or as allowed under these rules.

5.2 No authorization by permit or by these rules for underground injection shall be construed to authorize or permit any underground injection which endangers a drinking water source.

5.3 Underground injections are prohibited which would allow movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking water regulation (40 C.F.R. Part 141 and Utah Public Drinking Water Rules R309-103), or which may adversely affect the health of persons. Underground injections shall not be authorized if they may cause a violation of any ground water quality rules that may be promulgated by the Utah Water Quality Board. Any applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

5.4 For Class I and III wells, if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Executive Secretary shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including closure of the injection well, as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be terminated, or appropriate enforcement action may be taken if the permit has been violated.

5.5 For Class V wells, if at any time the Executive Secretary determines that a Class V well may cause a violation of primary drinking water rules under R309-103, the Executive Secretary shall:

A. require the injector to obtain an individual permit;

B. order the injector to take such actions, including closure of the injection well, as may be necessary to prevent the violation; or

C. take appropriate enforcement action.

5.6 Whenever the Executive Secretary determines that a Class V well may be otherwise adversely affecting the health of persons, the Executive Secretary may require such actions as may be necessary to prevent the adverse effect.

5.7 Class IV Wells

A. Prohibitions. The construction, operation or maintenance of any Class IV well is prohibited except as specified in 40 C.F.R. 144.13 (d) and 144.23(c) as limited by the definition of Class IV wells in Section 7-3.4 of these rules.

B. Plugging and abandonment requirements. Prior to abandoning a Class IV well, the owner or operator shall close the well in a manner acceptable to the Executive Secretary. At least 30 days prior to abandoning a Class IV well, the owner or operator shall notify the Executive Secretary of the intent to abandon the well.

5.8 Notwithstanding any other provision of this section, the Executive Secretary may take emergency action upon receipt of information that a contaminant which is present in, or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

5.9 Records. The Executive Secretary may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.

R317-7-6. Permit and Compliance Requirements - New and Existing Wells.

6.1 The owner or operator of any new injection well is required to obtain a permit from the Executive Secretary prior to construction unless excepted by R317-7-6.3. Compliance with construction plans and standards is required prior to commencing injection operations. Changes in construction plans require approval of the Executive Secretary.

6.2 Owners or operators of existing underground injection wells are required to obtain a permit from the Executive Secretary unless specifically excepted by Section 7-6.3 of these rules.

6.3

A. Existing and new Class V injection wells are authorized by rule, subject to the conditions in Section 7-6.5 of these rules.

B. Well authorization under this Section 7-6.3 expires upon the effective date of a permit issued in accordance with these rules or upon proper closure of the well.

C. An owner or operator of a well which is authorized by rule under this Section 7-6.3 is prohibited from injecting into the well:

1. Upon the effective date of a permit denial.

2. Upon failure to submit a permit application in a timely manner if requested by the Executive Secretary under Section 7-6.4 of these rules.

3. Upon failure to submit inventory information in a timely manner in accordance with Section 7-6.4(C) of these rules.

6.4

A. The Executive Secretary may require any owner or operator of a Class I, III or V well authorized under Section 7-6.3 to apply for and obtain an individual or area permit. Cases where permits may be required include:

1. The injection well is not in compliance with the

applicable rules.

2. The injection well is not or no longer is within the category of wells and types of well operations authorized by Section 7-6.3.

3. Protection of an USDW.

B. Any owner or operator authorized under Section 7-6.3 may request a permit and hence be excluded from coverage under Section 7-6.3.

C. Owners or operators of all injection wells regulated by Section 7-6.3 shall submit the following inventory information to the Executive Secretary:

1. facility name and location;

2. name and address of legal contact;

3. ownership of facility;

4. nature and type of injection wells; and

5. operating status of injection wells.

Inventory information shall be submitted no later than January 19, 1984 for existing injection wells and before injection begins for new injection wells.

6.5 Additional requirements for large-capacity cesspools and motor vehicle waste disposal wells (see Class V well descriptions in Sections 7-3.5(B) and 7-3.5(O), respectively).

A. All existing large-capacity cesspools (operational or under construction by April 5, 2000) must close by April 5, 2005. See closure requirements in Section 7-6.6.

B. All new or converted large-capacity cesspools (construction not started before April 5, 2000) are prohibited.

C. All existing motor vehicle waste disposal wells (operational or under construction by April 5, 2000) must either be closed or their owners or operators must obtain a UIC permit.

1. For those wells located within a ground water protection area as designated by the Utah Division of Drinking Water (DDW), closure or permit application submittal must take place within one year of completion of DDW's ground water protection area assessment for the pertinent area.

2. If Utah does not complete all the local ground water protection area assessments by January 1, 2004, or by January 1, 2005 if an extension is granted to the state as described in 40 CFR 144.87(b), all motor vehicle waste disposal wells statewide located outside an area with a completed assessment must either be closed or their owners or operators must submit a UIC permit application by January 1, 2005 (or by January 1, 2006 if an extension is granted to the state as described in 40 CFR 144.87(b)). The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

3. If Utah does complete all the local ground water protection area assessments by January 1, 2004, or by January 1, 2005 if an extension is granted to the state as described in 40 CFR 144.87(b), all motor vehicle waste disposal wells statewide located outside an area with a completed assessment must either be closed or their owners or operators must submit a UIC permit application by January 1, 2007.

4. If well closure is the option chosen, the closure requirements in Section 7-6.6 must be followed. The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

5. If obtaining a UIC permit is the option chosen, Utah Drinking Water Maximum Contaminant Levels (MCL's), Utah Ground Water Quality Standards, and EPA Adult Lifetime Health Advisories must be met at the point of injection while the permit application is under review. These standards must also be met at the point of injection under the terms of the permit, when issued. Utah Ground Water Protection Levels may be required to be met at downgradient ground water monitoring wells, if required to be installed. Such a permit may require pretreatment of the wastewater, and will require adherence to best management practices and monitoring of the quality of the injectate and any sludge generated.

D. All new or converted motor vehicle waste disposal wells (construction not started before April 5, 2000) are prohibited.

6.6 Class V well plugging and abandonment requirements.

A. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or Utah Public Drinking Water Rules R309-103, or may otherwise adversely affect the health of persons.

B. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

C. The owner or operator must notify the Executive Secretary of intent to close the well at least 30 days prior to closure.

6.7 Conversion of motor vehicle waste disposal wells. In limited cases, the Executive Secretary may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

6.8 Time for Application for Permit. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit a complete application to the Executive Secretary in accordance with Section 7-9 a reasonable time before construction is expected to begin, except for new wells covered by an existing area permit.

R317-7-7. Area Permits.

A. The Executive Secretary may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

1. described and identified by location in permit application, if they are existing wells, except that the Executive Secretary may accept a single description of wells with substantially the same characteristics;

2. within the same well field, facility site, reservoir, project, or similar unit in the State;

3. operated by a single owner or operator; and

4. used to inject other than hazardous waste.

B. Area permits shall specify:

1. the area within which underground injections are authorized; and

2. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon injection wells within the permit area provided that:

1. the permittee notifies the Executive Secretary at such time as the permit requires, when and where the new well has been or will be located;

2. the additional well meets the area permit criteria; and

3. the cumulative effects of drilling and operation of additional injection wells are considered by the Executive Secretary during evaluation of the area permit application and are acceptable to the Executive Secretary.

D. If the Executive Secretary determines that any additional well does not meet the area permit requirements, the Executive Secretary may modify or terminate the permit or take appropriate enforcement action.

E. If the Executive Secretary determines the cumulative effects are unacceptable, the permit may be modified.

R317-7-8. Emergency Permits.

Notwithstanding any provision in this Part VII, the Executive Secretary is authorized to issue emergency permits for specific underground injections provided the conditions and requirements of 40 C.F.R. 144.34 are met.

R317-7-9. Permitting Procedures and Conditions.

9.1 Application for a Permit

A. Any person who is required to have a permit shall complete, sign and submit an application to the Executive Secretary.

B. When the owner and operator are different, it is the operator's duty to obtain a permit.

C. The application must be complete before the permit is issued.

D. All applicants shall provide the following information:

1. activities conducted by the applicant which require a permit;

2. name, mailing address and location of facility;

3. up to four Standard Industrial Code (SIC) codes which best reflect the principal products or services provided;

4. operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

5. whether the facility is located on Indian lands;

6. list of State and Federal environmental permits or construction approvals received or applied for and other relevant environmental permits;

7. topographic map (or other map if the topographic map is unavailable) extending one mile beyond the property boundary; depicting the facility and its intake and discharge structures, any hazardous waste, treatment, storage and disposal facilities; each injection well; and wells, springs, surface water bodies, and drinking water wells listed in public records or otherwise known;

8. a brief description of the nature of the business;

9. a map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show a number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

10. a tabulation of data on all wells within the area of review which penetrates into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, any available water quality data, and any additional information the Executive Secretary may require;

11. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

12. maps and cross sections detailing the geologic structure and lithology of the local area;

13. generalized maps and cross sections illustrating the regional geologic and hydrologic setting;

14. proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected;

(b) average and maximum injection pressure; and

(c) source and an appropriate analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

15. proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

16. proposed stimulation program;

17. proposed injection procedure;

18. schematic or other appropriate drawings of the surface and subsurface construction details of the system;

19. contingency plans to cope with all shut-ins or well failures to prevent migration of fluids into any underground source of drinking water;

20. plans (including maps) for meeting the monitoring requirements;

21. for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken;

22. construction procedures, as follows:

(a) For Class I Nonhazardous Wells: a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with Section 7-10.1(A) or 40 C.F.R. 146.12;

(b) For Class I Hazardous Waste Wells: cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a

drilling, testing and coring program, which comply with 40 C.F.R. 146.65 and 146.66;

(c) For Class III wells: cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with section 7-10.1(B) or 40 C.F.R. 146.32.

23. A plan for plugging and abandoning the well, as follows:

(a) Class I Nonhazardous Well plans shall include information required by 40 C.F.R. 146.14(c) and Section 7-10.5 of these rules;

(b) Class I Hazardous Waste Well plans shall include information required by 40 C.F.R. 146.71(a)(4) and 146.72(a);

(c) Class III well plans shall include information required by 40 C.F.R. 146.34(c) and Section 7-10.5 of these rules.

24. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well. Class I Hazardous Waste wells shall also demonstrate financial responsibility pursuant to 40 C.F.R. 144.60 through 144.70;

25. such other information as may be required by the Executive Secretary.

9.2 Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date of permit approval.

9.3 Permit applications and reports required under these regulations shall be signed in accordance with 40 C.F.R. Section 144.32.

9.4 Permit Provisions, Conditions and Schedules of Compliance.

Any permit issued by the Executive Secretary is subject to the conditions and requirements and shall be issued in accordance with the procedures outlined in 40 C.F.R. 144.51 (a)-(o) and (q), 144.52, 144.53, 144.54, 144.55 and 146.7, and 40 C.F.R. 124.3(a), 124.5(a),(c),(d) and (f), 124.6(a),(c),(d) and (e), 124.8, 124.10(a)(1)ii, and iii, (a)(1)(v), 124.10(b),(c),(d) and (e), 124.11, 124.12(a) and 124.17(a) and (c). The permit may specify schedules of compliance which require compliance not later than three years after the effective date of the permit.

9.5 Duration of Permits. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed ten years. Permits for Class III wells shall be issued for a period up to the operating life of the facility. Each issued Class III well permit shall be reviewed by the Executive Secretary at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

9.6 Transfer, Modification, and Termination. Permits may be transferred, modified, revoked, reissued, or terminated by the Executive Secretary under the conditions and following the procedures outlined in 40 C.F.R. 144.38, 144.39, 144.40, 144.41, and 144.36.

9.7 Confidentiality of Information. The following information when submitted as required by these rules cannot be claimed confidential:

A. name and address of permit applicant or permittee; and

B. information which deals with the existence, absence or level of contaminants in drinking water.

9.8 Waivers of Requirements

A. The Executive Secretary may waive the requirements of these rules only under the conditions and circumstances outlined in 40 C.F.R. Section 144.16.

B. The "two mile" distance provisions in Sections 7-3.1(B), 7-3.4, 7-10.1(A)(1), and 7-11 of these rules may be reduced by the Board on a case-by-case basis to less than two miles but in no event to less than 1/4 mile upon a finding by the Board that the distance reduction will not pose a threat to any USDW. The burden shall be on the applicant to demonstrate that hydrogeologic conditions, ground water quality in the area, and other environmental studies and information support the finding.

R317-7-10. Technical Requirements for Class I Nonhazardous and Class III Wells.

10.1 Construction Requirements

A. Class I Nonhazardous Well Construction Requirements

1. All Class I Nonhazardous wells as defined in Section 7-3.1(B) shall be sited so they inject beneath the lowermost formation containing, within two miles of the well bore, an USDW.

2. All Class I Nonhazardous wells shall be cased and cemented to prevent the movement of fluids into or between USDW's. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluid, formation fluids, and temperatures;

f. lithology of injection and confining intervals; and

g. type or grade of cement.

3. All Class I Nonhazardous injection wells (except for municipal wells injecting noncorrosive wastes) shall inject through tubing with a packer set immediately above the injection zone or tubing with an approved fluid seal. Alternatives may be used with the written approval of the Executive Secretary if they provide a comparable level of protection.

The following factors shall be considered in determining and specifying requirements for tubing, packer or alternatives:

a. depth of setting;

b. characteristics of injected fluid;

c. injection pressure;

d. annular pressure;

e. rate, temperature and volume of injected fluid; and

f. size of casing.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new wells and a descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the

Executive Secretary. At a minimum, such logs and tests shall include:

a. deviation checks on holes constructed by drilling a pilot hole, and then enlarging the pilot hole;

b. Such other logs and tests as may be required by the Executive Secretary. In determining which logs and tests shall be required, the following shall be considered for use in the following situations:

(1) for surface casing intended to protect USDW's:

(a) electric and caliper logs (before casing is installed);

(b) cement bond, temperature or density log (after casing is set and cemented);

(2) for intermediate and long strings of casing intended to facilitate injection:

(a) electric, porosity and gamma ray logs (before casing is installed);

(b) fracture finder logs;

(c) cement bond, temperature or density log (after casing is set and cemented).

5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new wells:

a. fluid pressure;

b. temperature;

c. fracture pressure;

d. physical and chemical characteristics of the injection matrix; and

e. physical and chemical characteristics of the formation fluids.

B. Class III Construction Requirements

1. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Executive Secretary may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources or drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluids and formation fluids;

f. lithology of injection and confining zones; and

g. type and grade of cement.

2. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

3. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

a. fluid pressure;

b. fracture pressure; and

c. physical and chemical characteristics of the formation fluids.

4. Where the injection zone is not a water bearing formation, only the fracture pressure must be submitted.

5. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any USDW above the injection zone.

6. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

7. Where the injection wells penetrate an USDW in a area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW.

10.2 Operation Requirements

A. For Class I Nonhazardous and Class III wells it is required that:

1. Except during stimulation, the injection pressure at the wellhead shall not exceed a maximum which shall be calculated to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall the injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.

2. Injection between the outermost casing protecting USDW's and the well bore is prohibited.

B. For Class I Nonhazardous wells, unless an alternative to tubing and packer has been approved, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Executive Secretary and a pressure approved by the Secretary shall be maintained on the annulus.

10.3 Monitoring. The permittee shall identify types of tests and methods used to generate the monitoring data:

A. Class I Nonhazardous well monitoring shall, at a minimum, include:

1. the analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

2. installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between tubing and the long string of casing;

3. a demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well; and

4. the type, number and location of wells within the area of review to be used to monitor any migration of fluids into and

pressure in the USDW, the parameters to be measured and the frequency of monitoring.

5. Ambient monitoring requirements for Class I Nonhazardous wells found in 40 C.F.R. 146.13(d).

B. Class III monitoring shall, at a minimum, include:

1. the analyses of the physical and chemical characteristics of the injected fluid with sufficient frequency to yield representative data on its characteristics;

2. monitoring of injection pressure and either flow rate or volume semi- monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;

3. demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well for salt solution mining;

4. monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 7-10.2 of these rules, semi-monthly;

5. quarterly monitoring of wells required by Section 7-10.1(B)(7).

6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

7. In determining the number, location, construction and frequency of monitoring of the monitoring wells, the criteria in 40 C.F.R. 146.32(h) shall be considered.

10.4 Reporting Requirements

A. For Class I Nonhazardous injection wells reporting shall, at a minimum, include:

1. quarterly reports to the Executive Secretary on:

a. the physical, chemical and other relevant characteristics of injection fluids;

b. monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

c. the results of monitoring of wells in the area of review.

2. Reporting the results, with the first quarterly report after the completion of:

a. periodic tests of mechanical integrity;

b. any other test of the injection well conducted by the permittee if required by the Executive Secretary; and

c. any well work over.

B. For Class III injection wells reporting shall, at a minimum, include:

1. quarterly reporting to the Executive Secretary on required monitoring;

2. results of mechanical integrity and any other periodic test required by the Executive Secretary reported with the first regular quarterly report after the completion of the test; and

3. monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

10.5 Plugging and Abandonment Requirements

A. Prior to abandoning Class I Nonhazardous and Class III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluid either into or between underground sources of drinking water. The Executive Secretary may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

B. Placement of the cement plugs shall be accomplished by one of the following:

1. the Balance Method;

2. the Dump Bailer Method;

3. the Two-Plug Method; or

4. an alternative method approved by the Executive Secretary which will reliably provide a comparable level of protection to USDW's.

C. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once, or by a comparable method prescribed by the Executive Secretary, prior to the placement of the cement plug.

D. The plugging and abandonment plan required in Section 7-9 shall, in the case of a Class III well field which underlies or is in an aquifer which has been exempted, also demonstrate adequate protection of USDW's. The Executive Secretary shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDW's.

10.6 Information to be Considered by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment of Class I Nonhazardous injection wells are found in 40 C.F.R. 146.14 and Class III injection wells are found in 40 C.F.R. 146.34.

R317-7-11. Technical Requirements for Class I Hazardous Waste Injection Wells.

11.1 Applicability. Statements of applicability and definitions are described in 40 C.F.R. 146.61.

11.2 Minimum Siting Criteria. Minimum siting requirements for Class I hazardous waste wells are described in 40 C.F.R. 146.62.

11.3 Area of Review. The area of review is defined for Class I hazardous waste injection wells in 40 C.F.R. 146.63.

11.4 Corrective Action for Wells in the Area of Review. Corrective action requirements for wells found within the area of review are located in 40 C.F.R. 146.64.

11.5 Construction Requirements. Construction requirements for all Class I hazardous waste injection wells are found in 40 C.F.R. 146.65.

11.6 Logging, Sampling, and Testing Prior to New Well Operation. Pre-operation requirements for logging, sampling, and testing of new wells are found in 40 C.F.R. 146.66.

11.7 Operating Requirements. Operation requirements for Class I hazardous waste injection wells are found in 40 C.F.R. 146.67.

11.8 Testing and Monitoring Requirements. Testing and monitoring requirements are found in 40 C.F.R. 146.68.

11.9 Reporting Requirements. Reporting requirements are

found in 40 C.F.R. 146.69.

11.10 Information to be Evaluated by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment are found in 40 C.F.R. 146.70.

11.11 Closure. Well closure requirements are found in 40 C.F.R. 146.71.

11.12 Post-closure Care. Post-closure care requirements for Class I hazardous waste injection wells and facilities are found in 40 C.F.R. 146.72.

11.13 Financial Responsibility for Post-closure Care. Financial responsibility requirements for care of a Class I hazardous waste injection well during post-closure are found in 40 C.F.R. 146.73.

11.14 Requirements for Wells Injecting Hazardous Waste. Requirements for injection of waste accompanied by a manifest are found in 40 C.F.R. 144.14.

R317-7-12. Hazardous Waste Injection Restrictions.

12.1 Purpose, Scope, and Applicability. Standards are found in 40 C.F.R. 148.1.

12.2 Definitions. Definitions are found in 40 C.F.R. 148.2.

12.3 Dilution Prohibited as a Substitute for Treatment. The prohibition is found in 40 C.F.R. 148.3.

12.4 Procedures for Case-by-case Extensions to an Effective Date. Requirements are found in 40 C.F.R. 148.4.

12.5 Waste Analysis. Requirements are found in 40 C.F.R. 148.5.

12.6 Waste Specific Prohibitions - Solvent Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.10.

12.7 Waste Specific Prohibitions - Dioxin - Containing Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.11.

12.8 Waste Specific Prohibitions - California List Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.12.

12.9 Waste Specific Prohibitions - First Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.14.

12.10 Waste Specific Prohibitions - Second Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.15.

12.11 Waste Specific Prohibitions - Third Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.16.

12.12 Waste Specific Prohibitions - Newly Listed Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.17.

12.13 Petitions to Allow Injection of a Waste Prohibited Under Sections 7.11 and 7.12. Requirements for petitions to allow injection of prohibited wastes are found in 40 C.F.R. 148.20.

12.14 Information to be Submitted in Support of Petitions. Requirements are found in 40 C.F.R. 148.21.

12.15 Requirements for Petition Submission, Review and Approval or Denial. Requirements are found in 40 C.F.R. 148.22.

12.16 Review of Exemptions Granted Pursuant to a Petition. Requirements are found in 40 C.F.R. 148.23.

12.17 Termination of Approved Petition. Petition termination requirements are found in 40 C.F.R. 148.24.

R317-7-13. Public Participation.

In addition to hearings required under the State Administrative Procedures Act 63-46b, et seq. and proceedings otherwise outlined or referenced in these regulations, the Board or its duly appointed representative will investigate and provide written response to all citizen complaints duly submitted. In addition, the Board shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute or rule. The Board will publish notice of and provide at least thirty (30) days of public comment on any proposed settlement of any enforcement action.

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R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 COMPARABILITY WITH THE CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The Executive Secretary of the Utah Water Quality Board has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Executive Secretary in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Executive Secretary has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

In accordance with UCA Subsection 19-5-112(2), a hearing for a person who has been denied a permit or who has had a permit revoked shall be conducted before the Executive Director or his (or her) designee. The decision of the Executive Director is final and binding on all parties unless a judicial appeal is made. Appeals of permit conditions are also made to the Executive Director. The Executive Secretary is under the administrative direction of the Executive Director of the Department of Environmental Quality.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms approved by the Utah Water Quality Board, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Executive Secretary, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Executive Secretary to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board or its authorized representative.

(15) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any

subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(16) "Draft permit" means a document prepared under R317-8-6.3 indicating the Executive Secretary's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

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

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

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

(20) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

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

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

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

(24) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

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

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

(27) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(29) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(30) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

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

(32) "Permit" means an authorization, license, or equivalent control document issued by the Executive Secretary to implement the requirements of the UPDES regulations. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

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

(35) "Pollutant" means, for the purpose of these regulations, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in

accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

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

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

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

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

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these regulations, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

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

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

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

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

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

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

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

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

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

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

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

(53) "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

(54) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

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

(56) "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.6 or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

(57) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

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

(59) "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State includes "wetlands" as

defined in the Federal Clean Water Act.

(60) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

(62) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water Quality Act.

1.6 DEFINITIONS APPLICABLE TO STORM-WATER DISCHARGES.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the Executive Secretary as part of a large or medium municipal separate storm sewer system. See R317-8-3.9(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Executive Secretary as part of the large or medium municipal separate storm sewer system. See R317-8-3.9(6)(b) for provisions regarding this definition.

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

(9) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs R317-8-1.6(4), (7), and (14) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(10) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(11) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(12) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(13) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(14) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to paragraphs R317-8-1.6(4) and (7) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(15) "Small MS4" means a small municipal separate storm sewer system.

(16) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(17) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See R317-8-3.9(6)(c) and (d) for provisions applicable to this definition.

(18) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The following abbreviations and acronyms, as used throughout the UPDES regulations, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 PUBLIC PARTICIPATION. In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these regulations, the Executive Secretary will investigate and provide written response to all citizen complaints. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute "Executive Secretary" for all federal regulation references to "State Director".

(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute "Executive Secretary" for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards) with the following exception:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(5) 40 CFR 403.7 (Removal Credits)

(6) 40 CFR 403.13 (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR 403.15 (Net/Gross Calculation)

(8) 40 CFR Parts 405 through 471

(9) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(10) 40 CFR 122.30

(11) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with R317-8-3.9(5).

(12) 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.

(13) 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 refeerence

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.

(14) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(15) 40 CFR 122.36

(16) For the references R317-8-1.10(11), (12), (13), (14), and (15) make the following substitutions:

(a) "The Executive Secretary of the Water Quality Board" for the "NPDES permitting authority"

(b) "UPDES" for "NPDES"

R317-8-2. Scope and Applicability.

2.1 APPLICABILITY OF THE UPDES REQUIREMENTS. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Executive Secretary shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Executive Secretary deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through R317-8-8.10.

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Storm water discharges; and

(e) Silvicultural point sources.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in R317-8-3.6, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Executive Secretary may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Utah Water Quality Board pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Executive Secretary to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Executive Secretary decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Executive Secretary shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Executive Secretary may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Executive Secretary shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the

determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

2.2 PROHIBITIONS. No permit may be issued by the Executive Secretary:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES regulations and for which the Executive Secretary has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Executive Secretary to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Executive Secretary stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Executive Secretary must make a decision (unless the Executive Secretary establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close

of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the Executive Secretary may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Executive Secretary may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Executive Secretary may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Executive Secretary. Extensions will be no more than six months in duration.

2.5 GENERAL PERMITS

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;

6. Any other appropriate division or combination of boundaries as determined by the Executive Secretary.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.

c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;

d. Require the same or similar monitoring; and

e. In the opinion of the Executive Secretary, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Executive Secretary a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Executive Secretary notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice),

in accordance with the permit either upon receipt of the notice of intent by the Executive Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Executive Secretary. Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Executive Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Executive Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Executive Secretary shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Executive Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Executive Secretary may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The Executive Secretary may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Executive Secretary to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Executive Secretary may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Executive Secretary with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Executive Secretary in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Executive Secretary may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The Executive Secretary may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: P=E x N/T

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 DECISION ON VARIANCES

(1) The Executive Secretary may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Executive Secretary may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 APPLYING FOR A UPDES PERMIT

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Executive Secretary as described in this regulation and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Executive Secretary will accept the information required under R317-8-3.5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Executive Secretary in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Executive Secretary requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Executive Secretary. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under R317-8-3.9(6)11 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also R317-8-3.2 and R317-8-3.9(2)1.g. and 2.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Executive Secretary may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Executive Secretary may grant permission to submit the information required by R317-8-3.5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Executive Secretary to apply under R317-8-3. Forms may be obtained from the Executive Secretary. In addition to any other applicable requirements in this section, all POTWs

and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Executive Secretary, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Executive Secretary may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES regulations.

(5) Completeness. The Executive Secretary will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Executive Secretary receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Executive Secretary, using the application form provided by the Executive Secretary.

(a) The activities being conducted which require the applicant to obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the Executive Secretary or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the Executive Secretary.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Executive Secretary within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Executive Secretary prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Executive Secretary determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Executive Secretary at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Executive Secretary, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Executive Secretary an address for receipt of any legal paper for service of process. The last address provided to the Executive Secretary pursuant to this provision shall be the address at which the Executive Secretary may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.2 APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.5 or new discharges of storm

water associated with industrial activity which are subject to R317-8-3.9(2)(a) except as provided by R317-8-3.9(2)(a)2, shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.5(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.5(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Executive Secretary may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.12(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.12(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.12(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);)

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.12(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.4.

3.3 CONFIDENTIALITY OF INFORMATION

(1) Any information submitted to the Executive Secretary pursuant to the UPDES regulations may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words

"confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Executive Secretary under R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.4 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Executive Secretary under R317-8-3.9(3) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Executive Secretary.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3.5 APPLICATION REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under R317-8-3.5. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, (for example, "dye-making reactor," "distillation tower.") For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(4) Intermittent flows. If any of the discharges described in R317-8-3.5(3) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production levels. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by R317-8-4.3(2).

(6) Improvements. If the applicant is subject to any

present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in R317-8-3.9. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Executive Secretary may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine,, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Executive Secretary may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under R317-8-3.9(3) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Executive Secretary). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in R317-8-3.9(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.9 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Executive Secretary may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Executive Secretary may waive the reporting requirements for one or more of the pollutants listed in R317-8-3.5(7)(a) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one or more primary industry category, listed in R317-8-3.11 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table 1 of R317-8-3.12 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.5(8). Table II of R317-8-3.12 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.12 (the toxic metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.12 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not

so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.12 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.12 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.12(5) of this regulation, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin(TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2.4.5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.12(2), organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Executive Secretary may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Executive Secretary has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.5(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Executive Secretary, upon request, other information as the Executive Secretary may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

3.6 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) Permit required. Concentrated animal feeding operations are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

1. Animals, other than aquatic animals, have been, are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

3. Two (2) or more animal feeding operations under common ownership if they adjoin each other or if they use a common area or system for the disposal of wastes and meet the conditions of a(1) and (2) above.

b. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in this Section or which the Executive Secretary designates under subsection (3) of this section.

(c) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4 plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(d) "Manmade" means constructed by man and used for the purpose of transporting wastes.

(3) Case-by-Case designation of concentrated animal feeding operations.

(a) The Executive Secretary may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary shall consider the following factors:

1. The size of the animal feeding operation and the amount

of wastes reaching waters of the State;

2. The location of the animal feeding operation relative to waters of the State;

3. The means of conveyance of animal wastes and process waste waters into waters of the State;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the State; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in R317-8-3.6(5)(a) or (b) will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into the waters of the State which 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 operations.

(c) A permit application will not be required from a concentrated animal feeding operation designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the operation and determined that the operation could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated animal feeding operations shall provide the following information to the Executive Secretary, using the application form provided:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(5) Criteria for determining a concentrated animal feeding operation. An animal feeding operation is a concentrated animal feeding operation for purposes of this regulation if either of the following criteria are met.

(a) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:

1. 1,000 slaughter and feeder cattle,

2. 700 mature dairy cattle, whether milked or dry cows,

3. 2,500 swine each weighing over 25 kilograms, (approximately 55 pounds),

4. 500 horses,

5. 10,000 sheep or lambs,

6. 55,000 turkeys,

7. 100,000 laying hens or broilers, if the facility has continuous over flow watering,

8. 30,000 laying hens or broilers, if the facility has a liquid manure handling system,

9. 5,000 ducks, or

10. 1,000 animal units.

(b) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:

1. 300 slaughter or feeder cattle,

2. 200 mature dairy cattle, whether milked or dry cows,

3. 750 swine, each weighing over 25 kilograms (approximately 55 pounds),

4. 150 horses,

5. 3,000 sheep or lambs,

6. 16,500 turkeys,

7. 30,000 laying hens or broilers, if the facility has continuous overflow watering,

8. 9,000 laying hens or broilers, if the facility has a liquid manure handling system,

9. 1,500 ducks, or

10. 300 animal units; and

11. Either one of the following conditions are met:

- Pollutants are discharged into waters of the state through a manmade ditch, flushing system or other similar manmade device; or

- Pollutants are discharged directly into waters of the State which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

(6) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in R317-8-3.6(5)(a) and (b) if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

3.7 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.7(5) or which the Executive Secretary designates under R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Executive Secretary may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary will consider the following factors:

1. The location and quality of the receiving waters of the State;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the State; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Executive Secretary using the application

form provided:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000) pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.8 AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.9 STORM WATER DISCHARGES

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the Executive Secretary determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Executive Secretary may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Executive Secretary may consider the following factors:

a. The location of the discharge with respect to waters of the State;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the State; and

d. Other relevant factors.

(b) The Executive Secretary may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The Executive Secretary may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges

from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

4. A regional authority may be responsible for submitting a permit application under the following guidelines:

i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.9(3).

5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Executive Secretary may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.9(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing UPDES permit number.

(e) Other municipal separate storm sewers. The Executive Secretary may issue permits for municipal separate storm sewers that are designated under R317-8-3.9(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Executive Secretary, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.

(h) Small municipal, small construction, TMDL pollutants of concern, and significant contributors of pollution.

1. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (1)(a) of this section to obtain a permit, operators shall be required to obtain a UPDES permit only if:

a. The discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see R317-8-1.10(11)).

b. The discharge is a storm water discharge associated with small construction activity pursuant to paragraph R317-8-3.9(6)(e).

c. The Executive Secretary or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

d. The Executive Secretary or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. Operators of small MS4s designated pursuant to paragraphs (1)(h)1.a., (1)(h)1.c., and (1)(h)1.d. of this section shall seek coverage under an UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 (see R317-8-1.10(12) through R317-8-1.10(14). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b; (1)(h)1.c; and (1)(h)1.d of this section shall seek coverage under a UPDES permitin accordance with paragraph (2)(a) of this section.

3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the Executive Secretary for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary (see R317-8-3.6(3)).

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Executive Secretary is evaluating under R317-8-3.9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.9(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.

1. Except as provided in R317-8-3.9(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.5(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than O.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.5(2),(3),(4),(5),(7)(a),(c), and (f); and

g. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in R317-8-3.9(2)(a)1e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in R317-8-3.5(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of R317-8-3.2(3)(b) and (c) and 3.2(5).

2. An operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-3.9(6)(c)11 of this section or is associated with small construction activity solely under paragraph R317-8-3.9(6)(e) of this section, is exempt from the requirements of R317-8-3.5 and R317-8-3.9(2)(a)1. Such operator shall provide a narrative description of:

a. The location (including a map) and the nature of the

construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with R317-8-3.9(2)(a)1, unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987;

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Executive Secretary may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.9(2)(a)2 to comply with R317-8-3.9(2)(a)1.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Executive Secretary under R317-8-3.9(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.9(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.9(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

b. A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

i. The location of known municipal storm sewer system outfalls discharging to waters of the State;

ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, and estimate of an average runoff coefficient shall be provided;

iii. The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

iv. The location and the permit number of any known discharge to the municipal storm sewer that has been issued a UPDES permit;

v. The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

vi. The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

i. Assessed and reported in CWA 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated

uses;

ii. Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

iii. Listed in Utah Nonpoint Source Assessments that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

iv. Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

v. Recognized by the applicant as highly valued or sensitive waters;

vi. Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

vii. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (for any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

i. A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

iv. Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

v. Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or building in the area; history of the area; and land use types;

vi. For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

vii. Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in R317-8-3.9(3)(a)4di-vi, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of R317-8-3.9(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.9(3)(b)3.a, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfall or field screening points for such sampling should reflect water quality concerns to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls;

wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Financial resources. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. The location of any major outfall that discharges to waters of the State that was not reported under R317-8-3.9(3)(a)3b 1. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with R317-8-3.5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the Executive Secretary (based on information received in part 1 of the application, the Executive Secretary shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Executive Secretary shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.5(7) (the Executive Secretary may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.9(3)(b)3.a i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.13, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

iv. Additional limited quantitative data required by the Executive Secretary for determining permit conditions (the Executive Secretary may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.9(3)(b)2 or R317-8-3.9(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent

detected in any sample required under R317-8-3.9(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Executive Secretary when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.9(3)(b)4d;

iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under R317-8-3.9(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public

information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.9(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.5(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.9(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.9(3)(a)4e, 3.9(3)(b)3b, and 3.9(3)(b)4 are not practicable or are not applicable, the Executive Secretary may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.9(1)(a)5, R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Executive Secretary shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.9(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Storm water discharges associated with industrial activities.

1. Except as provided in paragraph (4)(a)2. Of this section, for any storm water discharge associated with industrial activity identified in paragraphs R317-8-3.9(6)(d)1 through 11 of this section that is not authorized by a storm water general permit, a permit application made pursuant to paragraph R317-8-3.9(2) of this section must be submitted to the Executive Secretary by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Executive Secretary by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Executive Secretary by November 18, 1991;

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application;

3. Part 2 of the application shall be submitted to the Executive Secretary by November 16, 1992.

(c) For any discharge from a medium municipal separate storm sewer system;

1. Part 1 of the application shall be submitted to the Executive Secretary by May 18, 1992.

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application.

3. Part 2 of the application shall be submitted to the Executive Secretary by May 17, 1993.

(d) A permit application shall be submitted to the Executive Secretary within 180 days of notice, unless permission for a later date is granted by the Executive Secretary for;

1. A storm water discharge which the Executive Secretary

determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. A storm water discharge subject to R317-8-3.9(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.9(4)(a).

(f) For any storm water discharge associated with small construction activity identified in paragraph R317-8-3.9(6)(e)1. of this section, see R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33 (see R317-8-1.10(12)) must be submitted to the Executive Secretary by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1) (see R317-8-1.10(11)) unless your MS4 serves a jurisdiction with a population under 10,000 and the Executive Secretary has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Executive Secretary grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) (see R317-8-1.10(11) and (12)).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Executive Secretary to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Executive Secretary for the designation of a large, medium, or small municipal separate storm sewer system as defined by R317-8-1.6(4), (7), and (14).

(e) The Executive Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Executive Secretary shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Executive Secretary may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Executive Secretary may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; and

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).

(b) The Executive Secretary may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers describer under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Executive Secretary may consider the following factors;

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(7)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; or

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).

(c) Storm water discharges associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under this part R317-8. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste

materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purpose of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (d)1. through(11.) of this section) include those facilities designated under the provisions of paragraph (1)(a)5. of this section.

d. The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section (see R317-8-3.9(1)(a)2 and (6)(c)).

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under category R317-8-3.9(6)(c)11;

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under R317-8-3.9(6)(c) 1 through 7 or R317-8-3.9(6)(c) 9 through 11 are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge.

10. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

(e) Storm water discharge associated with small construction activity means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Executive Secretary may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Executive Secretary that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

b. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Executive Secretary that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the Executive Secretary based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

(7) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and/or runoff, and the discharger satisfies the conditions in paragraphs (7)(a) through (7)(d) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge must:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff:

2. Complete and sign (according to R317-8-3.3) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (7)(b) of this section:

3. Submit the signed certification to the Executive Secretary once every five years;

4. Allow the Executive Secretary or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the Executive Secretary or authorized representative to make any "no exposure" inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

2. Adequately maintained vehicles used in material handling; and

3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(c) Limitations

1. Storm water discharges from construction activities identified in paragraphs R317-8-3.9(6)(d)10. and R317-8-3.9(6)(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for an UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge become subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

4. Notwithstanding the provisions of this paragraph, the Executive Secretary retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Executive Secretary in determining if the facility qualifies for the no exposure exclusion:

1. The legal name, address and phone number of the discharger (see R317-8-3.1(3)).

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. Materials or residuals on the ground or in storm water inlets from spills/leaks;

c. Materials or products from past industrial activity;

d. Materials handling equipment (except adequately maintained vehicles);

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge to pollutants);

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

j. Application or disposal of process wastewater (unless otherwise permitted); and

k. Particulate matter or visible deposits or residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from UPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (7)(b) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Executive Secretary and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Executive Secretary or authorized representative or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and make such inspection reports publicly available upon request. I understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(8) The Executive Secretary may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)) to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.

(a) Criteria used in designation may include;

1. discharge(s) to sensitive waters,
2. areas with high growth or growth potential,
3. areas with a high population density,
4. areas that are contiguous to an urbanized area,
5. small MS4's that cause a significant contribution of pollutants to waters of the State,
6. small MS4's that do not have effective programs to protect water quality by other programs, or
7. other appropriate criteria.

(b) Permits for designated MS4's under this paragraph shall be under the same requirements as small MS4's designated under 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)).

3.10 SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.11 APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS.

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Executive Secretary.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.11(1)(a)

and (b) the Executive Secretary may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Executive Secretary determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under R317-8-3.11(1) or (2) to conduct toxicity testing. POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Executive Secretary regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the Executive Secretary a written technical evaluation of the need to revise local limits.

3.12 PRIMARY INDUSTRY CATEGORIES. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES regulations and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants
(2) Aluminum forming
(3) Auto and other laundries
(4) Battery manufacturing
(5) Coal mining
(6) Coil coating
(7) Copper forming
(8) Electrical and electronic components
(9) Electroplating
(10) Explosives manufacturing
(11) Foundries
(12) Gum and wood chemicals
(13) Inorganic chemicals manufacturing
(14) Iron and steel manufacturing
(15) Leather tanning and finishing
(16) Mechanical products manufacturing
(17) Nonferrous metals manufacturing
(18) Ore mining
(19) Organic chemicals manufacturing
(20) Paint and ink formulation
(21) Pesticides
(22) Petroleum refining
(23) Pharmaceutical preparations
(24) Photographic equipment and supplies
(25) Plastics processing
(26) Plastic and synthetic materials manufacturing
(27) Porcelain enameling
(28) Printing and publishing
(29) Pulp and paper mills
(30) Rubber processing
(31) Soap and detergent manufacturing
(32) Steam electric power plants
(33) Textile mills
(34) Timber products processing

3.13 UPDES PERMIT APPLICATION TESTING REQUIREMENTS

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

	GC/MS fraction (1)			
Industrial category	Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	...
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)	...	...	...
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.
* Testing required.

TABLE II
Organic Toxic Pollutants in Each of Four Fractions in Analysis
by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) VOLATILES

1V acrolein
2V acrylonitrile
3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
13V dichlorodifluoromethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroehtylene
17V 1,2-dichloropropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V metyl bromide
21V methyl chloride
22V methoylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
30V trichlorofluoromethane
31V vinyl chloride

(b) ACID COMPOUNDS

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2.4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

(c) BASE/NEUTRAL

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroethyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthanlene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenxo(a,h)anthracene
20B 1,2-dichlorobenzen
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phtahalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

(d) PESTICIDES

1P aldrin
2P alpha-BHC
3P beta-BHC
4P gamma-BHC
5P delta-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
10P dieldrin
11P alpha-endosulfan
12P beta-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

TABLE III
Other Toxic Pollutants; Metals, Cyanide, and Total Phenols

(a) Antimony, Total
(b) Arsenic, Total
(c) Beryllium, total
(d) Cadmium, Total
(e) Chromium, Total
(f) Copper, Total
(g) Lead, Total
(h) Mercury, Total
(i) Nickel, Total
(j) Selenium, Total
(k) Silver, Total
(l) Thallium, Total
(m) Zinc, Total
(n) Cyanide, Total
(o) Phenols, Total

TABLE IV
Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present

(a) Bromide
(b) Chlorine, Total Residual
(c) Color
(d) Fecal Coliform
(e) Fluoride
(f) Nitrate-Nitrite
(g) Nitrogen, total Organic
(h) Oil and Grease
(i) Phosphorus, Total
(j) Radioactivity
(k) Sulfate
(l) Sulfide
(m) Sulfite
(n) Surfactants
(o) Aluminum, Total
(p) Barium, Total
(q) Boron, Total
(r) Cobalt, Total
(s) Iron, Total
(t) Magnesium, Total
(u) Molybdenum, Total
(v) Manganese, Total
(w) Tin, Total
(x) Titanium, Total

TABLE V

28 Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

(a) Toxic Pollutants - Asbestos
(b) Hazardous Substances

1. Acetaldhyde
2. Allyl alcohol
3. Allyl chloride
4. Amyl acetate
5. Aniline
6. Benzonitrile
7. Benzyl chloride
8. Butyl acetate
9. Butylamine
10. Captan
11. Carbaryl
12. Carbofuran
13. Carbon disulfide
14. Chlorpyrifos
15. Coumaphos
16. Cresol
17. Crotonaldehyde
18. Cyclohexane
19. 2,4-D(2.4-Dichlorophenoxy acetic acid)
20. Diazinon
21. Dicamba
22. Dichlobenil
23. Dichlone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethyl amine
27. Dimethyl amine
28. Dintrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichloropydrin
33. Ethanolamine
34. Ethion
35. Ethylene diamine
36. Ethylene dibromide
37. Formaldehyde
38. Furfural
39. Guthion
40. Isoprene
41. Isopropanolamine dodecylbenzenesulfonate
42. Kelthane
43. Kepone
44. Malathion
45. Mercaptodimethur
46. Methoxychlor
47. Methyl mercaptan
48. Methyl methacrylate
49. Methyl parathion
50. Mevinphos
51. Mexacarbate
52. Monoethyl amine
53. Monomethyl amine
54. Naled
55. Npathenic acid
56. Nitrotouene
57. Parathion
58. Phenolsulfanante
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorconol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenylethane)
70. 2,4,5-TP (2-(2,4,5 - trichlorophenoxy)propanic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.14 APPLICATION REQUIREMENTS OF R317-8-3.8(7)(E) SUSPENDED FOR CERTAIN CATEGORIES AND SUBCATEGORIES OF PRIMARY INDUSTRIES. The application requirements of R317-8-3.5 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.11:

(1) Coal mines.

(2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

R317-8-4. Permit Conditions.

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit

noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or with gross negligence violates the Act, or any permit, rule or order adopted under it is subject to a fine of not more than $25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding $50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, including an authorized contractor acting as a representative of the Executive Secretary) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) and times analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding $10,000 or

imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified as indicated in R317-8-3.4. The Utah Water Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Executive Secretary for reporting results of monitoring of sludge use or disposal practices.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Executive Secretary.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Executive Secretary in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12) (d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Executive Secretary, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are

not subject to R317-8-4.1(13)(c) 1 and 2 or R317-8-4.1(13)(d).

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of bypass.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in R317-8-4.1(12)(f).

(d) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(c).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)(d) a, b, and c.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these regulations apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Executive Secretary as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(7) or (10).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(9).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Executive Secretary of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Executive Secretary under R317-8-3.9(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit

conditions;

2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

7. Identification of water quality improvements or degradation.

4.2 ESTABLISHING PERMIT CONDITIONS. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards promulgated under Section 19-5-104 of the Utah Water Quality Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Executive Secretary shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in R317-8-3.11, requirements will be incorporated as follows:

(a) On or before June 30, 1981:

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by R317-8-4.2(3)(a)1.

(c) The Executive Secretary shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Executive Secretary shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Executive Secretary may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Executive Secretary determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Executive Secretary shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Executive Secretary determines, using the

procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit will contain effluent limits for whole effluent toxicity.

5. Except as provided in R317-8-4.2, when the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Executive Secretary determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Executive Secretary will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Executive Secretary determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Executive Secretary to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Executive Secretary shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under R317-8-4.2 (1), (2), or (4) to control pollutants meeting the criteria listed in R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Executive Secretary determines, based on information reported in a permit application under R317-8-3.5(7) and (10), or in a notification under R317-8-4.1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the Executive Secretary, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Executive Secretary's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Except as provided in paragrahs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be a specified in R317-8-1.10(9) (where applicable), but in no case less than once a year.

(c) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(d) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (c)above) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require;

1. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

2. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

3. Such report and certification be signed in accordance with R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactivite mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(e) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under R317-8-4.1(12)(a),(d),(e), and (f) at least annually.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES regulations.

(b) Submit a local program when required by and in accordance with R317-8-8.10 to assure compliance with pretreatment standards to the extent applicable in the UPDES regulations. The local program will be incorporated into the permit as described in R317-8-8.10. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Executive Secretary determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible, or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

(a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

b. The Executive Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing

the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the Executive Secretary may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Executive Secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Executive Secretary to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage Sludge. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which rules have been established, in accordance with any applicable regulations.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned to require that the discharge comply with any applicable federal regulation promulgated by the Secretary of the department in which the Coast Guard is operating, and such condition will establish specifications for safe transportation, handling, carriage, and storage of pollutants, if applicable.

(16) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R317-8-6.9 will be included.

(17) State standards for sewage sludge use or disposal. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 19-5-104 of the Utah Water Quality Act, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Executive Secretary may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(18) Qualifying State or local programs.

(a) For storm water discharges associated with small construction activity identified in R317-8-3.9(6)(e), the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local program does not include one or more of the elements in this paragraph then the Executive Secretary must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and

4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in paragraph (18)(a) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.

4.3 CALCULATING UPDES PERMIT CONDITIONS. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations,

standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The Executive Secretary may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the Executive Secretary may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the Executive Secretary at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the Executive Secretary establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the Executive Secretary at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Executive Secretary under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water Quality Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should

not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Executive Secretary may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

4.4 STAYS OF CONTESTED PERMIT CONDITIONS.

(1) Stays

(a) If a request to the Executive Director for review of a UPDES permit is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in a hearing on a UPDES permit, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final action by the Executive Director. If the permit involves a new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source or discharger pending final action by the Executive Director.

(b) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Executive Director. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

(2) Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the Executive Director of one permit may result in changes to another state-issued permit only when each of the permits involved has been appealed to the Executive Director and he or she has accepted each appeal.

R317-8-5. Permit Provisions.

5.1 DURATION OF PERMITS

(1) UPDES permits shall be effective for a fixed term not to exceed 5 years.

(2) Except as provided in R317-8-3.1(4) (d), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(3) The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

5.2 SCHEDULES OF COMPLIANCE

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(b) The first UPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Interim dates. Except as provided in R317-8-5.2(2)(a)2 if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six months.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates, (but not more than one interim date per calendar year per project phase or segment), for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative Schedules of Compliance. A UPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for UPDES sources), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One schedule shall lead to timely compliance no later than the statutory deadline in the CWA;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance with the applicable requirements no later than the deadline specified in R317-8-7;

4. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under R317-8-5.2(2)(c), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as a resolution of the Board of Directors of a corporation.

5.3 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

5.4 EFFECT OF A PERMIT

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

5.5 TRANSFER OF PERMITS

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES regulations.

(2) Automatic Transfers. As an alternative to transfers under subsection (1) of this section, any UPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Executive Secretary at least thirty (30) days in advance of the proposed transfer date in R317-8-5.5(2)(b).

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The Executive Secretary does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

5.6 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMIT

The Executive Secretary may determine whether or not one or more of the causes, listed in R317-8-5.6(1) and (2) for modification or revocation and reissuance or both, exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in R317-8-5.6(3) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in R317-8-6 must be followed.

(1) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of revised permit conditions which are different or absent in the existing permit.

(b) Information. Information received by the Executive Secretary regarding permitted activities may show cause for modification. UPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, (except for revised regulations, guidance or test methods) and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For UPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New Regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on promulgated effluent limitation guidelines or promulgated water quality standards; or the Secondary Treatment Regulations; and

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Executive Secretary's action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with R317-8-6.1 within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R317-8-6.2 within ninety (90) days of judicial remand.

(d) Compliance Schedules. A permit may be modified if the Executive Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a UPDES compliance schedule be modified to extend beyond an applicable statutory deadline in R317-8-7.

(e) In addition the Executive Secretary may modify a permit:

1. When the permittee has filed a request for a variance under R317-8-2.3, R317-8-2.7 or for "fundamentally different factors" within the time specified in R317-8-3 or R317-8-7.7(8)a (and the Executive Secretary processes the request under the applicable provisions).

2. When required to incorporate an applicable toxic effluent standard or prohibition under R317-8-4.2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under R317-8-4.2(3) for toxic effluent limitations and standards for sewage sludge use or disposal.

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under R317-8-4.3(8).

5. When a discharger is no longer eligible for net limitations, as provided in R317-8-4.3(8).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(2)(c).

8. To establish a "notification level" as provided in R317-8-4.2(6).

9. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant from EPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

10. Upon failure of the Executive Secretary to notify an affected state whose waters may be affected by a discharge from Utah.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. When required by a permit condition to incorporate a

land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(2) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(a) Cause exists for termination under R317-8-5.7 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(b) The Executive Secretary has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the Executive Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of R317-8-6. Any permit modification not processed as a minor modification under this section must be made for cause and with a Section R317-8-6 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Executive Secretary;

(e) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R317-8-8.10 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.16 as enforceable conditions of the POTW's permits).

5.7 TERMINATION OF PERMIT

(1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(2) The Executive Secretary will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

R317-8-6. Review Procedures.

6.1 REVIEW OF THE APPLICATION

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Executive Secretary an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Executive Secretary at such time as the Executive Secretary indicates in R317-8-6.3)

(2) The Executive Secretary will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Executive Secretary within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Executive Secretary may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto.

(6) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Executive Secretary notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the Executive Secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Executive Secretary intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under the UPDES regulations.

6.2 REVIEW PROCEDURES FOR PERMIT MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Executive Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Executive Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the Executive Secretary tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Executive Secretary shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Executive Secretary tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 DRAFT PERMITS

(1) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Executive Secretary tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Executive Secretary's final decision (under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Executive Secretary tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Executive Secretary decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:

(a) All conditions under R317-8-4.1;

(b) All compliance schedules under R317-8-5.2;

(c) All monitoring requirements under R317-8-5.3;

(d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Executive Secretary will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A request for a hearing may be made pursuant to the Utah Water Quality Act, as amended, following the issuance of a final decision.

(6) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

6.4 FACT SHEETS

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Executive Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to

required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under R317-8-4.2(5);

2. Limitations on internal waste streams under R317-8-4.3(8);

3. Limitations on indicator pollutant;

4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b) or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Executive Secretary's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(1) Scope.

(a) The Executive Secretary will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under R317-8-6.3(2); or

2. A draft permit has been prepared under R317-8-6.3(4);

3. A hearing has been scheduled under R317-8-6.7; and

4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under .2. Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Executive Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.

7. Any other agency which the Executive Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).

(b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Executive Secretary will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Utah law; and

(d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or

medium to elicit public participation.

(4) Contents.

(a) All public notices issued under this part shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

6.7 PUBLIC HEARINGS

(1) The Executive Secretary shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Executive Secretary also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Executive Secretary's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Executive Secretary. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a request for a hearing under R317-8-6.13.

6.9 CONDITIONS REQUESTED BY THE CORPS OF ENGINEERS AND OTHER GOVERNMENT AGENCIES

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the Executive Secretary in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Executive Secretary that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Executive Secretary shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures or the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Executive Secretary in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Executive Secretary may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Executive Secretary may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 REOPENING OF THE PUBLIC COMMENT PERIOD

(1) The Executive Secretary may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Executive Secretary. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Executive Secretary.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Executive Secretary may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Executive Secretary may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Executive Secretary may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

6.11 ISSUANCE AND EFFECTIVE DATE OF PERMIT

(1) After the close of the public comment period under R317-8-6.5, the Executive Secretary will issue a final permit decision. The Executive Secretary will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision under R317-8-6.11(1) unless:

(a) A later effective date is specified in the decision; or an evidentiary hearing is requested as per these regulations; or

(b) A stay is granted pursuant to the Utah Water Quality Act, as amended and R317-8-6.13;

(c) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The order or determination which is a condition precedent to requesting a hearing under the Utah Water Quality Act, as amended and R317-8-6.13 shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the order is entered by the Executive Secretary and shall not begin on the date the permit decision becomes effective.

6.12 RESPONSE TO COMMENTS

(1) At the time that any final permit decision is issued under R317-8-6.11, the Executive Secretary shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit

have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this regulation.

(c) The response to the comments shall be available to the public. Any request for a hearing on the response shall be filed according to procedures specified in the Utah Water Quality Act, as amended and rules promulgated pursuant thereto.

6.13 HEARINGS UNDER THE WATER QUALITY ACT, AS AMENDED

(1) A determination under R317-8-6.11, when issued by the Executive Secretary, will be subject to a request for a hearing pursuant to the Utah Water Quality Act, as amended.

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to the Utah Water Quality Act, as amended.

(3) Any hearing held pursuant to this section will be subject to the provisions of the Utah Water Quality Act, as amended.

(4) Failure to raise issues pursuant to R317-8-6.8 will not preclude an aggrieved person from making a demand for a hearing pursuant to the Utah Water Quality Act, as amended.

R317-8-7. Criteria and Standards.

7.1 CRITERIA AND STANDARDS FOR TECHNOLOGY-BASED TREATMENT REQUIREMENTS

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and

2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b)of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);

2. Section 301(g) water quality related variance from BAT;

3. Thermal variance from BPT, BCT and BAT, under R317-8-7.4. may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or limit for a nonconventional pollutant which shall not be subject to modification where:

1. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

2.a. The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

b. The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible

to directly limit the toxic pollutant(s).

(b) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substances; or

2.a The limitation reflects BAT-level, co-control of discharges, or an appropriate level of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

b. The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

d. Hazardous substances which are also toxic pollutants are subject to R317-8-7.1(6).

(3) The Executive Secretary may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances) controlled by the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

7.2 CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

(1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No UPDES permit will be issued to an aquaculture project unless:

1. The Executive Secretary determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that if the species to be cultivated in the aquacultural project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The Executive Secretary determines that the crop will not have significant potential for human health hazards resulting from its consumption;

5. The Executive Secretary determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

7.3 CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent

as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the Executive Secretary in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section shall be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limit; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of R317-8-6.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference; and

2. The alternative effluent limitation or standard will ensure compliance with the UPDES regulations and the Utah Water Quality Act.

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw wasteload of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. Cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in R317-8-7.1.

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

3. The discharger's ability to pay for the required waste-treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this regulation shall be submitted in duplicate to the Executive Secretary in accordance with R317-8-6.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The person making the request shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication relevant to the regulations.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph l of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

7.4 CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes,

presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(l)(6) and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to R317-8-2.3(4).

(3) Early screening of applications for R317-8-2.3(4) variance.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the Executive Secretary in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the Executive Secretary at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the Executive Secretary's approval a detailed plan of study which the discharger will undertake to support its R317-8-2.3(4) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies: representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Executive Secretary will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Executive Secretary subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the administration.

(c) Any application for the renewal of R317-8-2.3(4) variance shall include only such information described in R317-8-7.4(3)(a) and (b) and R317-8-6 as the Executive Secretary requests within sixty (60) days after receipt of the permit application.

(d) The Executive Secretary shall promptly notify the Secretaries of the U.S. Departments of Commerce and Interior and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a R317-8-2.7 (4) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the Executive Secretary.

(4) Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the Executive Secretary that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Executive Secretary may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the Administrator under CWA section 304(a) (33 U.S.C. Section 1314(a)) or any other information which may be relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(5) In determining whether or not appreciable harm has occurred, the Executive Secretary will consider the length of time in which the applicant has been discharging and the nature of the discharge.

7.5 CRITERIA AND STANDARDS FOR BEST MANAGEMENT PRACTICES

(1) Purpose and Scope.

Best management practices (BMPs) for ancillary industrial activities shall be reflected in permits, including best management practices promulgated in effluent limitations and established on a case-by-case basis in permits.

(2) Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

(3) Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic or any pollutant listed as hazardous are subject to the requirements of R317-8-7.5 for all activities which may result in significant amounts of those pollutants reaching waters of the State. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

(4) Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable promulgated effluent limitations guideline;

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary. In issuing a permit containing BMP requirements, the Executive Secretary shall consider the following factors:

1. Toxicity of the pollutant(s);

2. Quantity of the pollutants(s) used, produced, or discharged;

3. History of UPDES permit violations;

4. History of significant leaks or spills of toxic or hazardous pollutants;

5. Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and

6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under R317-8-7.5(4)(b) alone or in combination with those required under R317-8-7.5(4)(a).

(d) In addition to the requirements of R317-8-7.5(4)(a) and (b), dischargers covered under R317-8-7.5(4) shall develop and implement a best management practices program in accordance with R317-8-7.5(5) which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the State.

(5) Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

1. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

2. Establish specific objectives for the control of toxic and hazardous pollutants.

a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the State due to equipment failure, improper operation, natural phenomena such as rain or snowfall.

b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

3. Establish specific best management practices to meet the objectives identified under R317-8-7.5(5)(b)2, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the State;

4. The BMP program: a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA and 40 CFR Part 151, and Storm Water Pollution Prevention Plans (SWPP),and may incorporate any part of such plans into the BMP program by reference;

b. Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

c. Shall address the following points for the ancillary activities in R317-8-7.4A(3):

i. Statement of policy;

ii. Spill Control Committee;

iii. Material inventory;

iv. Material compatibility;

v. Employee training;

vi. Reporting and notification procedures;

vii. Visual inspections;

viii. Preventative maintenance;

ix. Housekeeping; and

x. Security.

5. The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Executive Secretary shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of R317-8, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

6. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Executive Secretary for approval. If the Executive Secretary approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the Executive Secretary may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance

unless the Executive Secretary specifies a later date in the permit.

(c) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Executive Secretary upon request.

(d) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the State.

(e) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under R317-8-7.5(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.6 TOXIC POLLUTANTS. References throughout the UPDES regulations establish specific requirements for discharges of toxic pollutants. Toxic pollutants are listed below:

(1) Acenaphthene
(2) Acrolein
(3) Acrylonitrile
(4) Aldrin/Dieldrin
(5) Antimony and compounds
(6) Arsenic and compounds
(7) Asbestos
(8) Benzene
(9) Benzidine
(10) Beryllium and compounds
(11) Cadmium and compounds
(12) Carbon tetrachloride
(13) Chlordane (technical mixture and metabolites)
(14) Chlorinated benzenes (other than dichlorobenzenes)
(15) Chlorinated ethanes (including 1,2-dichloroethan, 1,1,1-trichloroethane, and hexachloroethane)
(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and moxed ethers)
(17) Chlorinated naphthalene
(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
(19) Chloroform
(20) 2-chlorophenol
(21) Chromium and compounds
(22) Copper and compounds
(23) Cyanides
(24) DDT and metabolites
(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
(26) Dichlorobenzidine
(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene)
(28) 2,4-dimethylphenol
(29) Dichloropropane and dichloropropene
(30) 2,4-dimethylphenol
(31) Dinitrotoluene
(32) Diphenylhydrazine
(33) Endosulfan and metabolities
(34) Ethylbenzene
(35) Enthylbenzene
(36) Fluoranthene
(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
(38) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane
(39) Heptachlor and metabolites
(40) Hexachlorobutadiene
(41) Hexachlorocyclohexane
(42) Hexachlorocyclopentadiene
(43) Isophorone
(44) Lead and compounds
(45) Mercury and compounds
(46) Naphthalene
(47) Nickel and compounds
(48) Nitrobenze
(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
(50) Nitrosamines
(51) Pentachlorophenol
(52) Phenol
(53) Phthalate esters
(54) Polychlorinated biphenyls (PCBs)
(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
(56) Selenium and compounds
(57) Silver and compounds
(58) 2,3,7,8-tetrachloro/dibenzo-p-dioxin (TCDD)
(59) Tetrachloroethylene
(60) Thallium and compounds
(61) Toluene
(62) Toxaphene
(63) Trichloroethylene
(64) Vinyl chloride
(65) Zinc and compounds

7.7 CRITERIA FOR EXTENDING COMPLIANCE DATES FOR FACILITIES INSTALLING INNOVATIVE TECHNOLOGY

(1) Purpose and Scope. This Section establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

(2) Authority. The Executive Secretary, in consultation with the Administrator, may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Executive Secretary is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable.

(3) Definitions.

(a) The term "innovative technology" means a production

process, a pollution control technique, or a combination of the two which satisfies one of the criteria in R317-8-7.8(4) and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

(4) Request for Compliance Extension. The Executive Secretary shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

(5) Permit conditions. The Executive Secretary may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable date is granted:

(a) A requirement that the discharger report annually on the installation, operation and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(6) Signatories to Request for Compliance Extension.

(a) All requests must be signed in accordance with the provisions of R317-8-3.4.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgement, the best information available. The Executive Secretary may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

(7) Supplementary Information and Record keeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Executive Director, at his or her request, such other information as the Executive Director may reasonably require to assess the performance and cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

(8) Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in R317-8-2.8. In addition, notwithstanding R317-8-2.3(3), the Executive Secretary may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

(b) A decision on a request for a compliance extension may be appealed under the Utah Water Quality Act to the Executive Director of the Department of Environmental Quality.

R317-8-8. Pretreatment.

8.1 APPLICABILITY

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) Any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

8.2 DEFINITIONS. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in R317-8-8.8 and 8.9 and which has been approved by the Executive Secretary in accordance with R317-8-8.10.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder.

(5) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with section 307 (b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to R317-8-8.5.

(6) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed Pretreatment Standards under section 307(c) of the Federal Clean Water Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section. See R317-8-8.3 for provisions applicable to this definition.

(7) "Pass through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of violation).

(8) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(9) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(10) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.

(11) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works which is owned by State or municipality within the State. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(12) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(13) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(11)(a)2, the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Parts 405 through 471; and

2. Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or designated as such by the Control Authority as defined in R317-8-8.11(1) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria in R317-8-8.1(10)(a)2 has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in R317-8-8.11(1)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, determine that such industrial user is not a significant industrial user.

(14) "Submission" means (a) a request by a POTW for approval of a pretreatment program to the Executive Secretary or (b) a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

8.3 PROVISIONS APPLICABLE TO DEFINITIONS. The following provisions are applicable to the definition of "New Source" provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located, or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

(3) The production or wastewater generating process of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(4) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of R317-8-8.3(2) or (3) but otherwise alters, replaces, or adds to existing process or production equipment.

(5) construction of a new source as defined has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or

equipment: or

2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment: or

3. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

8.4 LOCAL LAW. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the Executive Secretary.

8.5 NATIONAL PRETREATMENT STANDARDS: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.5(3) apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State or local pretreatment requirements.

(2) Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in R317-8-8.5(1) and the specific prohibitions in R317-8-8.5(3)(c),(d),(e), and (g) where the user can demonstrate that:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)i. A local limit designed to prevent pass through and/or interference, as the case may be, was developed in accordance with R317-8-8.5(4) for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

ii. If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with R317-8-8.5(4) for the pollutant(s) that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's UPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(3) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in R315-2-1.

(b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW:

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees C (104 degrees F) unless the Executive Secretary, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegrable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.5(1) and R317-8-8.5(3). Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits;

(b) All other POTWs shall, in cases where pollutants contributed by user(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's UPDES permit or sludge use or disposal practices;

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with R317-8-8.5(4), such limits shall be deemed pretreatment standards for purposes of 19-5-108 of the Utah Water Quality Act.

(6) State enforcement actions. If, within 30 days after notice of an interference or pass through violation has been sent by the Executive Secretary to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Executive Secretary may take appropriate enforcement action.

8.6 NATIONAL PRETREATMENT STANDARDS: Categorical Standards

(1) In addition to the general prohibitions in R317-8-8.4(1), all indirect dischargers shall comply with national

pretreatment standards in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(2) Industrial users may request the Executive Secretary to provide written certification on whether an industrial user falls within a particular subcategory. The Executive Secretary will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6 (c) - (e).

8.7 REMOVAL CREDITS. POTWs may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7.

8.8 POTW PRETREATMENT PROGRAMS: Development by POTW

(1) POTW required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the Executive Secretary exercises the option to assume local responsibility as provided for in R317-8-8.8(6)(b)(12). The Executive Secretary may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) Deadline for Program Approval. POTWs identified as being required to develop a POTW pretreatment program under R317-8-8.8(1) shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Executive Secretary of such identification. The POTW pretreatment program shall meet the criteria set forth in R317-8-8.8(6) and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of Approved Programs in Permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in R317-8-8.8(2). The POTW's UPDES permit will be modified under R317-8-5.6(3)(g) to incorporate the approved program conditions as enforceable conditions of the permit.

(4) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTWs existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three years, for the approval of the legal authority, procedures and funding required by paragraph (6) of this subsection.

(5) Cause for Reissuance or Modification of Permits. The Executive Secretary may modify or revoke and reissue a POTW's permit in order to:

(a) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) Coordinate the issuance of a CWA Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) Incorporate an approved POTW pretreatment program in the POTW permit;

(d) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(e) Incorporate a modification of the permit approved under R317-8-5.6; or

(f) Incorporate the removal credits established under R317-8-8.7.

(6) Pretreatment Program Requirements: Development and Implementation by POTW. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its UPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by industrial users;

3. Control, through permit, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under R317-8-8.2(10), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

a. Statement of duration (in no case more than five years);

b. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

c. Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits and State and local law;

d. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law;

e. Statement of applicable civil and criminal penalties for

violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in R317-8-8.11 of this section;

5. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under R317-8-8.11 of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 19-5-106(4) of the Utah Water Quality Act.

7. Obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance and shall have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation of pretreatment standards and requirements by industrial users. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section R317-8-8.15 by November 16, 1989.

8. Pretreatment requirements enforced through the remedies set forth in R317-8-8.8(6)(a)(7) shall include, but not be limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or R317-8-8. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial user and opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The Executive Secretary shall have authority to seek judicial relief for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the Executive Secretary finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision, and will comply with the confidentiality requirements set forth in R317-8-3.3.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the Executive Secretary upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under subparagraph (1) above. This information shall be made available to the Executive Secretary upon request;

3. Notify industrial users identified under R317-8-8.8(6)(b) of applicable pretreatment standards and any other applicable requirements. Within 30 days of approval of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the requirements of R317-8-8.11.

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Executive Secretary upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including non-routine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under R317-8-8.5 with procedures for follow-up written notification within five days;

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. The results of these activities shall be made available to the Executive Secretary upon request;

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by R317-8-8.11, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

7. Comply with all applicable public participation requirements of State law and rules. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH.

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under R317-8-8.8(6)(a)8 to halt or prevent such a discharge:

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance:

f. Failure to provide within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

8. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the Executive Secretary when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

9. Local Limits. The POTW shall develop local limits as required in section R317-8-8.5(4) or demonstrate that they are not necessary.

10. Enforcement Response Plan. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum;

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response;

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in R317-8-8.7(6)(a) and (b).

11. List of Industrial Users. The POTW shall prepare a list of its industrial users meeting the criteria of R317-8-8.2(10)(a). The list shall identify the criteria in R317-8-8.2(10)(a)(1) applicable to each industrial user and, for industrial users meeting the criteria in R317-8-8.2(10)(a)(2), shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(10)(b) that such industrial user should not be considered a significant industrial user. This list and any subsequent modifications thereto, shall be submitted to the Executive Secretary as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Executive Secretary 90 days after submission of the list or modifications thereto, unless the Executive Secretary determines that a modification is in fact a substantial modification.

12. State Program in Lieu of POTW Program. Notwithstanding the provision of R317-8-8.8(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.8(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

8.9 POTW PRETREATMENT PROGRAMS AND/OR AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL

(1) Who Approves the Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in R317-8-8.9(2)(a),(b),(c) and (d). This description shall be submitted to the Executive Secretary, who will make a determination on the request for program approval in accordance with the procedure described in R317-8-8.10.

(2) Contents of POTW Program Submission.

(a) The program submission shall contain a statement from the city attorney or a city official acting in comparable capacity or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in R317-8-8.8. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.8(6)(a) which provides the basis for each procedure under R317-8-8.8(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.8 including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce

them in the event of noncompliance by industrial users.

(b) The program submission shall contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission shall contain a brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

(d) The program submission shall contain a description of the funding levels and full and part time manpower available to implement the program.

(3) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of R317-8-8.9(2) of this subsection except that the requirements of this section may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Executive Secretary will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of Removal Credit Submission. The request for authority to revise categorical pretreatment standards shall contain the information required in 40 CFR 403.7.

(5) Approval Authority Action. A POTW requesting POTW pretreatment program approval shall submit to the Executive Secretary three copies of the submission described in R317-8-8.9(2). Within 60 days after receiving a submission, the Executive Secretary shall make a preliminary determination of whether the submission meets the requirements of this section. Upon a preliminary determination that the submission meets the requirements of this section, the Executive Secretary will:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in R317-8-8.10.

(6) Notification Where Submission is Defective. If, after review of the submission as provided for in paragraph (5) above, the Executive Secretary determines that the submission does not comply with the requirements of R317-8-8.9(2), (3) and, if appropriate, (4), the Executive Secretary will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of R317-8-8.9(2), (3) and, if appropriate, (4).

(7) Consistency With Water Quality Management Plans.

(a) In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan, when the plan includes management agency designations and addresses pretreatment in a manner consistent with R317-8-8. In order to assure such consistency, the Executive Secretary will solicit the review and comment of the appropriate water quality planning agency during the public comment period provided for in R317-8-8.10(2)(a)(2) prior to approval or disapproval of the program.

(b) Where no plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the Executive Secretary will solicit the review and comment of the appropriate 208 planning agency.

8.10 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) Deadline for Review of Submission. The Executive Secretary will have 90 days from the date of public notice of a submission complying with the requirements of R317-8-8.9(2), and where removal credit authorization is sought with the requirements of R317-8-8.7 and 8.8.9(4) to review the submission. The Executive Secretary shall review the submission to determine compliance with the requirements of R317-8-8.8(2) and (6), and where removal credit is sought, with R317-8-8.6. The Executive Secretary may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in R317-8-8.10(2) is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.10(2)(a). In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Public Notice and Opportunity for Hearing. Upon receipt of a submission the Executive Secretary will commence his review. Within 20 days after making a determination that a submission meets the requirements of R317-8-8.9(2), and when a removal credit authorization is sought under R317-8-8.7 the Executive Secretary will:

(a) Issue a public notice of request for approval of the submission:

1. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include: mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists;

and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

2. The public notice will provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission;

3. All written comments submitted during the 30-day comment period will be retained by the Executive Secretary and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Executive Secretary.

(b) The Executive Secretary will also provide an opportunity for the applicant, any affected State, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in R317-8-8.10(2)(a)2. of this subsection and will indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

2. The Executive Secretary will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt will be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate will be published in the same newspaper as the notice of the original request. In addition, notice of the hearing will be sent to those persons requesting individual notice.

(3) Executive Secretary Decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in R317-8-8.10(1) of this section, the Executive Secretary will approve or deny the submission based upon the evaluation in R317-8-8.10(1) and taking into consideration comments submitted during the comment period and the record of the public hearing, the Executive Secretary will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the Executive Secretary may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to Executive Secretary's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the Executive Secretary if following the thirty (30)-day or extended evaluation period provided for in R317-8-8.10(2)(a)(2) and any public hearing held pursuant to this section, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections will be provided to the applicant and to each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and many convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) Notice of Decision. The Executive Secretary will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the Executive Secretary will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The Executive Secretary will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) Public Access to Submission. The Executive Secretary will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

8.11 REPORTING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

(1) Definition. "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been approved or the Executive Secretary if the submission has not been approved.

(2) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standards Baseline Report. Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under R317-8-8.6, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a) through (g) of this Section. Where reports containing this information have already been submitted to the Executive Secretary, the industrial user will not be required to submit this information again. At least 90 days prior to commencement of discharge, new sources and sources that become Industrial Users subsequent to promulgation of an applicable categorical standard, shall be required to submit to the Control Authority a report which contains the information listed in R317-8-8.11(2)(a), (b), (c), (d) and R317-8-8.11(3). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in R317-8-8.11(2)(d) and (e).

(a) Identifying Information. The user shall submit the name and address of the facility, including the name of the operator and owners.

(b) Permits. The user shall submit a list of any environmental control permits held by or for the facility.

(c) Description of Operations. The user shall submit a brief description of the nature, average rate of production and Standard Industrial Classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula (see Section 40

CFR 403.6(e)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process.

2. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations.

3. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control authority may waive flow-proportional composite sampling for any Industrial Users that demonstrate that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

4. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of R317-8-8.11.

5. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula this adjusted limit along with supporting data shall be submitted to the Control Authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the Administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

7. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

8. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance Schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6,or by a fundamentally different factors variance under R317-8-8.15 at the time the user submits the report required by R317-8-8.11(2), the information required by R317-8-8.11(2)(f) and (g) shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6, or by a fundamentally different factors variance under R317-8-8.15 after the user submits the report required by R317-8-8.11(2) of this subsection, any necessary amendments to the information requested by R317-8-8.11(2)(f) and (g) shall be submitted by the user to the Control Authority within 60 days after the modified limit is approved.

(3) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.11(2)(g):

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) No increment referred to in paragraph (a) of above shall exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority;

(4) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the Control Authority a report containing the information described in R317-8-8.11(2)(d. e. and f). For industrial users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in

R317-8-8.6 this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5) Periodic Reports on Continued Compliance.

(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the pretreatment standard or by the Executive Secretary, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in R317-8-8.11(2)(d) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays and budget cycles, the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) When the Control Authority has imposed mass limitations on industrial users as provided by R317-8-8.6, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the Control authority in accordance with the procedures in R317-8-8.6 the report required by R317-8-8.11(5)(a) shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by R317-8-11(5)(a) shall include the user's actual average production rate for the reporting period.

(6) Notice of Potential Problems Including Slug Loading. All categorical and non-categorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in R317-8-8.5.

(7) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) The reports required in R317-8-8.11(2), 8.10(4) and (5) shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the Control Authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if;

1. The Control Authority performs sampling at the industrial user at a frequency of at least once per month, or

2. The Control Authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable Pretreatment Standards and Requirements.

(d) All analyses shall be performed in accordance with procedures contained in 40 CFR 136 or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the Administrator.

(e) If an industrial user subject to the reporting requirement in R317-8-8.11(5) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.11(7)(d), the results of this monitoring shall be included in the report.

(8) Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

(b) No increment referred to in paragraph (a) above shall exceed nine months.

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Executive Secretary including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Executive Secretary.

(9) Reporting requirements for industrial user not subject to categorical pretreatment standards. The Control Authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant Noncategorical Industrial Users shall

submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 CFR 136. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Executive Secretary determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(10) Annual POTW reports. POTWs with approved pretreatment programs shall provide the Executive Secretary with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) Any other relevant information requested by the Executive Secretary.

(11) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under R317-8-8.10.

(12) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.11(2), (4) and (5) shall include the certification statement as set forth in 40 CFR and 403.6(2)(B). and shall be signed as follows;

(a) By a responsible corporate officer if the industrial user submitting the reports is a corporation. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) above, if;

1. The authorization is made in writing by the individual described in paragraph (a) or (b) above.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

(d) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(13) Signatory Requirements for POTW Reports. Reports submitted to the Executive Secretary by the POTW in accordance with R317-8-8.11(8), (9) and (10) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(14) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.11(2), (4), (5), (8), (9), (12) and (13) shall be subject to the Utah Water Quality Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(15) Record-Keeping Requirements.

(a) Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

2. The dates and times analyses were performed;

3. Who performed the analyses;

4. The analytical techniques or methods used; and

5. The results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall be required to retain for a

minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the Executive Secretary, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the Executive Secretary.

(c) A POTW to which reports are submitted by an industrial user pursuant to R317-8-8.11(2)(4), and (5) shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Executive Secretary. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the Executive Secretary.

(d) Notification to POTW by Industrial User.

1. The industrial user shall notify the Executive Secretary, the POTW, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under R315-2-1. Such notification must include the name of the hazardous waste as set forth in R315-2-1, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under R317-8-8.11(11). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.11(2), (4), and (5).

2. Dischargers are exempt from the requirements of R317-8-8.11(15)(d) during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in R315-2-1. Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 R315-2-1, requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations adopted by EPA or the Utah Solid and Hazardous Waste Board identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of notification made under R317-8-8.16(d)1, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

8.12 CONFIDENTIALITY OF INFORMATION. Any information submitted to the Executive Secretary pursuant to these regulations may be claimed as confidential by the person making the submission. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the 40 CFR Part 2. Information and data provided to the Executive Secretary pursuant to this part which is effluent data shall be available to the public without restriction. All other information which is submitted to the State or POTW shall be available to the public at least to the standards of 40 CFR 2.302.

8.13 NET/GROSS CALCULATION. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with this section.

(1) Application. Any industrial user wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of R317-8-8.13(2) and (3) are met.

(2) Criteria

a. The industrial user must demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS) and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.

d. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis.

8.14 UPSET PROVISION

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of R317-8-8.14(3) are met.

(3) Conditions Necessary for a Demonstration of Upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the upset or if this information is provided orally, a written submission within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

4. Burden of Proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Reviewability of Agency Consideration of Claims of Upset. In the usual exercise of prosecutorial discretion, State enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

8.15 BYPASS PROVISION

(1) Definitions.

(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of R317-8-8.15(3) and (4).

(3) Notice.

(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Control Authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Prohibition of bypass.

(a) Bypass is prohibited and the Control Authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waters, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under R317-8-8.15(3).

(b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in R317-8-8.15(4)(a).

8.16 MODIFICATION OF POTW PRETREATMENT PROGRAMS

(1) General. Either the Executive Secretary or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the

POTW's submission, as approved under Section R317-8-8.10.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.16(3):

1. The POTW shall submit to the Executive Secretary a statement of the basis for the desired modification, a modified program description or such other documents the Executive Secretary determines to be necessary under the circumstances.

2. The Executive Secretary shall approve or disapprove the modification based on its regulatory requirements.

3. The modification shall be incorporated into the POTW's UPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with R317-8-5.6(3)(g).

4. The modification shall become effective upon approval by the Executive Secretary. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification.

(b) The POTW shall notify the Executive Secretary of any other (i.e. non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in R317-8-8.16(2)(a)1. Such non-substantial program modifications shall be deemed to be approved by the Executive Secretary, unless the Executive Secretary determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Executive Secretary such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the Executive Secretary determines that a modification reported by a POTW is in fact a substantial modification, the Executive Secretary shall notify the POTW and initiate the procedures in R317-8-8.16(2)(a).

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;

2. Changes to local limits, which result in less stringent local limits;

3. Changes to the POTW's control mechanism;

4. Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.):

5. A decrease in the frequency of self-monitoring or reporting required of industrial users;

6. A decrease in the frequency of industrial user inspections or sampling by the POTW;

7. Changes to the POTW's confidentiality procedures;

8. Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and

9. Changes in the POTW's sludge disposal and management practices.

(b) The Executive Secretary may designate other specific modifications in addition, to those listed in R317-8-8.16(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.16(3)(a) is nonetheless a substantial modification for purposes of this section if the modification:

1. Would have a significant impact on the operation of the POTW's Pretreatment Program;

2. Would result in an increase in pollutant loadings at the POTW; or

3. Would result in less stringent requirements being imposed on industrial users of the POTW.

8.17 VARIANCES FROM CATEGORICAL PRETREATMENT STANDARDS FOR FUNDAMENTALLY DIFFERENT FACTORS (FDF). A variance may be granted, using the procedures of 40 CFR 403.13, to an industrial user if data specific to the user indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue.

KEY: water pollution, discharge permits

January 23, 2001	**19-5**
Notice of Continuation December 12, 1997	**19-5-104**
	40 CFR 503

R361. Governor, Planning and Budget.

R361-1. Rule for Implementation of the Resource Development Coordinating Committee Act, 1981.

R361-1-1. Authority and Purpose.

The purpose of this rule is to provide guidelines for the implementation of Section 63-28a-1, which describes the purposes of the Resource Development Coordinating Committee, by establishing procedures for the operation of the Committee, and defining its relationship to the State Planning Coordinator. The rule has been promulgated under authority of Sections 63-28a-1 and 63-28a-4.

R361-1-2. Definitions.

A. "Area Clearinghouse" shall mean one of the seven multi-county associations of local government established by Governor's Executive Order dated June 8, 1972.

B. "Committee" shall mean the Resource Development Coordinating Committee.

C. "Federal Action" shall mean all actions submitted by federal agencies for review pursuant to R361-1-4(E)(2).

D. "Federal Agency Representatives" shall mean representatives of federal agencies which deal with the environment or physical resources of the state, who are invited to act as liaison with the Committee in order to encourage full information exchanges and cooperation in land use planning and similar efforts.

E. "Federally-Assisted Action" shall mean all actions submitted for review pursuant to R361-1-4(E)(3).

F. "Member Agency" shall mean one of the state agencies from which the membership of the Committee is drawn.

G. "Membership" shall mean the Committee membership as set by Section 63-28a-3(1).

H. "Priority Item" shall mean any one of the review items which has been designated by the Governor's Office, the State Planning Coordinator, or the Committee Chairperson as having high interest to the state.

I. "Review Item" shall mean one of the submitted actions listed for review on the agenda of the Committee, including, for example, any one of the state, federal or federally-assisted actions.

J. "State Action" shall mean all actions submitted by state agencies for Committee review pursuant to R361-1-4(E)(1).

K. "Utah State Clearinghouse" shall mean that part of the Office of Planning and Budget under the control of the State Planning Coordinator which acts as the receiving point for all review items.

R361-1-3. Responsibilities of the State Planning Coordinator.

A. Staff support to the Committee.

The State Planning Coordinator will be responsible for staff support to the Committee, will be responsible for meeting arrangements and minutes, and will prepare and distribute the final state position on review items. A lead member agency may be designated to prepare the recommended state position on a review item. The State Planning Coordinator may also provide that member agencies may comment directly to the sponsoring entity.

B. Agenda for Committee Meetings.

1. The State Planning Coordinator will prepare the agenda for each Committee meeting, setting the time and place for the meeting. The agenda shall consist of a summary of all items received for review by the Utah State Clearinghouse during the appropriate time frame, and other items as determined by the State Planning Coordinator.

2. A copy of each agenda shall be sent to the Committee membership, federal agency representatives, all area clearinghouses, and other interested parties as requested, including members of the press. Requests to receive the agenda should be directed to the Utah State Clearinghouse, Office of Planning and Budget.

C. Summary of Review Items.

1. The State Planning Coordinator will prepare and distribute the summary of review items weekly.

2. The summary of review items shall state the item's state identifier number (assigned by the Utah State Clearinghouse), the sponsoring entity, a brief description of the project, and other relevant information. Priority items will be identified as separate summary items. The summary of review items shall also set a date for completion of Committee review for each item. The scheduled date for each item shall allow the State Planning Coordinator or the Governor sufficient time to review and distribute the state position within the following time parameters:

a. For state actions; within 30 days of submission, unless pursuant to state law or rule a different time is required, in which case the review completion date shall be set to allow sufficient time to meet the required response date. The sponsoring state agency must inform the State Planning Coordinator of the state law or rule setting the alternate review time.

b. For federal actions; sufficient time to review and distribute the state position by the response date lawfully set by the federal agency.

c. For federally-assisted actions; sufficient time to review and distribute the state position within 30 days of submission, or such response date as may be lawfully set by the federal funding agency.

d. For other actions, sufficient time to review and distribute the state position within 30 days, unless an alternate time is required by federal law or regulation, or state law or rule.

3. A copy of the summary of review items will be available weekly through the GOPB On-Line computerized Bulletin Board Service. Instructions and access coding information on usage of this service is available at the Governor's Office of Planning and Budget, 116 State Capitol.

D. Review of Actions.

Comments by member agencies concerning individual review items shall be reviewed pursuant to the duties of the State Planning Coordinator set by Sections 63-28-1 and 63-28a-1. The State Planning Coordinator will act as mediator for unresolved differences among member agencies, unless the differences occur among agencies within the same department, in which case the department head may be asked to resolve the differences. After review and resolution of differences, as necessary, comments on state actions shall be forwarded to the initiating state agency, or the governor, or both; comments on federal and federally assisted actions shall be distributed

pursuant to the Governor's considerations and recommendations.

R361-1-4. Committee Procedures.

A. Membership.

1. The director of each member agency shall appoint a representative and an alternate to the Committee. The state science advisor shall be the position's own representative. The Office of Planning and Budget shall maintain a current Committee membership list.

2. Each representative shall represent the agency's position on policy and technical matters concerning review items.

3. If a representative is unable to attend a meeting, the alternate shall attend. The State Planning Coordinator may request replacement of a representative.

B. Election and Responsibilities of the Chairperson and Vice Chairperson.

1. The chairperson and vice chairperson shall be elected, with the concurrence of the State Planning Coordinator, from the Committee membership for a one year term at the first scheduled Committee meeting in January of each year. Election shall be by majority vote of the membership.

2. The chairperson shall be responsible for:

a. conducting Committee meetings;

b. assisting the State Planning Coordinator in the preparation of the Committee agenda;

c. assisting the State Planning Coordinator in review of member agency and other comments on review items, and in preparation of the state position on those items;

d. assisting the State Planning Coordinator in the development of Committee procedures and the updating of these guidelines as appropriate.

3. The vice chairperson shall assume the responsibilities of the chairperson during the chairperson's absence.

C. Voting.

A majority vote of those members present (a minimum of nine members) is required to take official action, unless otherwise provided in these rules.

D. Meetings.

The Committee shall meet twice each month at a date, time and place specified by the State Planning Coordinator, except December, when the Committee may meet only once. Emergency meetings may be called by the chairperson or the State Planning Coordinator.

E. Submission of Review Items.

State, federal, federally-assisted and other items shall be submitted to the Utah State Clearinghouse for inclusion on the Committee agenda as follows:

1. Member Agencies.

a. Member agencies shall submit for review any proposed action affecting the state's environment or physical resources for which that agency is directly or administratively responsible, unless the action is exempt from review as provided by R361-1-(E)(1)(b). The agency shall submit notice of the action on a form provided by the State Planning Coordinator. The agency shall also forward a copy of the notice to the area clearinghouse(s) in the impacted area(s). The agency shall submit the notice at such time to allow the Committee the time for review set pursuant to R361-1-3(B)(2).

b. Exemption Procedures. The State Planning Coordinator may enter into a Memorandum of Understanding (MOU) with each member agency. The MOU shall outline the types of actions exempt from review. Each member agency shall submit an exemption request to the State Planning Coordinator in order to begin the development or modification of an MOU. The State Planning Coordinator shall develop the MOU only after close coordination with the member agency and, if appropriate, Committee review and recommendation. In the absence of an effective MOU, member agencies shall submit all actions for review, as stated in R361-1-4(E)(1)(a). The Office of Planning and Budget shall maintain a list of current MOUs.

2. Federal Agencies.

Actions affecting the state's environment or physical resources shall be submitted by federal agencies as provided by federal law or regulation, or relevant agreements between federal agencies and the Governor, including, for example:

a. The National Environmental Policy Act, Public Law 91-190, 83 Stat. 852 (1969);

b. Presidential Executive Order 12372, 47 Fed. Reg. 30959;

c. Proposed federal regulations pertaining to natural resource issues (published in the Federal Register);

d. Cooperative Agreement between the Governor of Utah and the State Director, Bureau of Land Management, U.S. Department of the Interior, dated January 26, 1988;

e. Memorandum of Understanding between the Governor of Utah and Regional Forester, Intermountain Region, United States Forest Service, U.S. Department of Agriculture, dated June 16, 1988;

f. Cooperative Agreement between the Governor of Utah and Regional Director, Rocky Mountain Region, National Park Service, U.S. Department of the Interior, dated December 12, 1980;

g. Memorandum of Understanding between the Department of Defense and the State of Utah Single Point of Contact (Office of Planning and Budget) Implementing Executive Order 12372, dated April 3, 1989.

3. Applications for Federal Funding.

All parties applying for federal funds for projects affecting the environment or physical resources of the state, and which are subject to the Utah Federal Assistance Management Program (Section 63-40-4), or Presidential Executive Order 12372 (47 Fed. Reg. 30959), shall submit the applications for review.

4. Other.

Other parties may submit items for formal Committee review or informational purposes. Inclusion on the agenda will be at the discretion of the State Planning Coordinator.

F. Subcommittees.

1. The Committee may establish standing or ad hoc subcommittees to review and provide recommendations on specific review items. A request to establish subcommittees may be initiated by the State Planning Coordinator, or by any member agency. Subcommittee membership may be selected from other than Committee membership, including, but not limited to, federal representatives. Subcommittee membership shall be determined by the chairperson in consultation with the Committee, with the concurrence of the State Planning Coordinator.

2. The subcommittee chairperson shall be appointed by the

Committee chairperson with the concurrence of the State Planning Coordinator.

3. The subcommittee shall work under the direction of the Committee, and shall report such findings and recommendations as it determines to make to the full Committee.

G. Federal Agency, Interest Group and General Public Participation. Federal agencies, interest groups and the general public may:

1. Make comments or recommendations on proposed state actions. Such comments should be directed to the State Planning Coordinator for review under R361-1-3(C). Oral comments at Committee meetings will be allowed at the discretion of the chairperson.

2. Ask the Committee for an extension of time to review a state action.

3. Make comments or recommendations on other review items. Such comments, if in writing, should be directed to the State Planning Coordinator for review under R361-1-3(C). Oral comments at Committee meetings will be allowed at the discretion of the chairperson.

4. Request time to make a presentation before the Committee concerning any review item or resource issue of interest to the state. Such a request must be initiated through the State Planning Coordinator, and may be granted at the discretion of the State Planning Coordinator.

H. Committee Actions.

1. As part of the review process, the Committee may:

a. Request additional information through presentations or documentation, or both;

b. Request additional time for review;

c. At the request of the sponsoring agency, shorten the time for Committee review pursuant to R361-1-4(I)(2);

d. Provide for supplemental meetings where high public interest merits extended discussion.

2. Following the review process, the Committee may:

a. Refrain from making comment, provide comments without recommendations, or provide comments with recommendations;

b. Recommend involvement of the State Planning Coordinator or the Governor;

c. Take other action as appropriate.

I. Time Frames.

1. Review of all review items shall be completed by the date set in the Committee agenda.

2. Requests for expedited review may be considered and granted at the discretion of the Committee, with the concurrence of the State Planning Coordinator, or by the State Planning Coordinator. Any Committee member, federal representative, or other interested party may request expedited review as part of the submission of a review item. The request will be considered at the next scheduled Committee meeting, unless otherwise directed by the State Planning Coordinator. Requests will be considered on an individual basis, however, sponsoring entities should be advised that expedited review will generally not be approved unless extenuating circumstances exist. If the request is approved, the Committee or the State Planning Coordinator must set a new date by which Committee review is to be completed.

KEY: natural resources, Resource Development Coordinating Committee (RDCC)*
August 11, 1995 63-28a-1
Notice of Continuation January 11, 2001

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

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

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

R414-63-2. Pharmacy Reimbursement.

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

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

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

R414-63-3. Periodic Evaluation of Reimbursement.

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

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

KEY: medicaid
January 17, 2001 26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-309. Utah Medical Assistance Program (UMAP).

R414-309-1. UMAP General Eligibility Requirements.

(1) The Department complies with Section 26-18-10. The Department adopts Pub. L. No. 105-33(5302)(c)(2) and (3), (5306)(d), (5307)(a), (5563), (5566), and (5571), which is incorporated by reference.

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

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

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

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

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

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

(3) Conditions of eligibility for UMAP:

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

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

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

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

(4) Citizenship requirements for UMAP:

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

(a) U.S. born or a naturalized citizen;

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

(c) Residents from Freely Associated States;

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

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

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

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

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

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

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

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

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

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

(5) Residence requirements for UMAP:

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

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

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

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

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

(7) The Department shall determine income eligibility for UMAP as follows:

(a) At application, the Department shall total the actual countable income received in the 12 months prior to the application month, divide the total by 12 to arrive at a monthly average and compare the monthly average to the UMAP BMS for the household size.

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

(c) If the averaged monthly countable income as determined in R414-309-1(7)(a) does not exceed the UMAP

BMS, the Department shall budget income and determine the best estimate for the application month and any ongoing month in the same manner as described in R414-304-7.

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

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

(i) a bona fide loan of money which must be repaid;

(ii) rental subsidies;

(iii) trust funds that are not available on demand;

(iv) GA, AFDC, or Refugee Cash Assistance (RCA) grants;

(v) HEAT assistance;

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

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

(viii) unearned income in-kind.

(ix) special payments to American Indians.

(c) The following deductions are allowed:

(i) payments for a health or accident insurance policy;

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

TABLE

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

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

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

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

(c) The UMAP income standard is as follows:

TABLE

Household Size	UMAP Income Standard (BMS)
1	337
2	413
3	516
4	602
5	686
6	756
7	792
8	829
9	868
10	904
11	941
12	978
13	1016
14	1053
15	1090
16	1128

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

(9) Self-employment income:

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

(a) labor;

(b) stock;

(c) raw materials;

(d) seed and fertilizer;

(e) taxes and interest paid for income-producing property;

(f) insurance premiums;

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

(10) Deductions for income-producing property include:

(a) property taxes;

(b) insurance;

(c) incidental repairs;

(d) advertising;

(e) landscaping;

(f) utilities.

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

(12) UMAP budgeting methods:

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

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

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

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

(e) Only student income and farm or self-employment

income are prorated.

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

(13) UMAP coverage begins the date a completed, signed application is received by the Department. There is no provision for retroactive UMAP coverage.

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

(15) Individuals included in the UMAP BMS:

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

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

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

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

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

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

(17) UMAP resource requirements:

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

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

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

(d) The following resources are exempt and are not counted to determine eligibility:

(i) one home, including a mobile home;

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

(iii) water rights attached to the home or lot occupied by the client;

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

(v) one vehicle;

(vi) an irrevocable burial trust;

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

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

(ix) a life estate which serves as the primary residence of the client;

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

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

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

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

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

KEY: UMAP
January 17, 2001 26-18
Notice of Continuation February 6, 1998

R420. Health, Health Care Financing, Medical Assistance Program.

R420-1. Utah Medical Assistance Program.

R420-1-1. Introduction and Authority.

(1) The Utah Medical Assistance Program (UMAP) is designed to provide medically necessary care to low income clients who are not eligible for Medicaid or Medicare.

(2) This rule is authorized under Section 26-18-10.

R420-1-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

R420-1-3. Client Eligibility Requirements.

(1) To be eligible for UMAP services, clients must meet the criteria in R414-309. These criteria can be viewed at the UMAP administrative office located at 288 N. 1460 W., Salt Lake City, Utah, or at any site where the Department of Workforce Services or the Department of Health determines eligibility for clients.

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

R420-1-4. Program Access Requirements.

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

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

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

R420-1-5. Service Coverage.

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

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

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

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

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

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

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

(2) UMAP may cover the following medical services:

(a) outpatient hospital services;

(b) physician services;

(c) midwife and birthing center services;

(d) radiology and lab services;

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

(f) dental services;

(g) pharmacy services;

(h) rural health services;

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

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

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

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

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

R420-1-6. Limitations and Excluded Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) a condition caused when the client was in custody;

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

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

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

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

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

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

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

(a) cosmetic surgery;

(b) tympanoplasties;

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

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

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

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

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

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

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

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

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

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

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

(n) elective surgery, organ transplants;

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

(p) treatment in a pain clinic;

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

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

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

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

(u) a service for a condition that is a complication of, or a

follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility;

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

(w) D4K anti-ulcer PPIs;

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

R420-1-7. Form MI-706.

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

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

(b) is an emergency service; or

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

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

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

R420-1-8. Claims.

(1) A provider shall submit a claim for UMAP services in the same way he submits a bill for Utah Medicaid services, except the provider must submit a form MI-706 number for UMAP services. If UMAP has authorized a service, a form MI-706 number will be printed on top of the form MI-706. The provider shall enter this number in the appropriate box on the invoice. The provider shall submit the claim no later than 12 months after the date of service or six months after the form MI-706 was issued, whichever is later.

(2) If a provider timely submits a claim and the claim is denied because there is no form MI-706, the provider may resubmit the claim to UMAP no later than one year after the date of service or two months after the date of denial, whichever is later. The provider shall include with the resubmitted claim a copy of the remittance advice showing the denial, and documentation explaining the nature of the medical care provided.

R420-1-9. Reimbursement.

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

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

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

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

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

R420-1-10. Third Party Liability.

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

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

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

R420-1-11. Client Rights and Responsibilities.

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

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

(3) If a client misses an appointment with a private provider, the client shall make a $5 co-payment to UMAP for

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

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

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

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

KEY: indigent, medicaid, UMAP
January 23, 2001 26-1-5
Notice of Continuation July 21, 1997 26-18-10

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-2. Air Medical Service Rules.

R426-2-1. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a.

(2) The purpose of this Rule is to set forth air ambulance policies and rules and standards adopted by the Utah Emergency Medical Services Committee which promote and protect the health and safety of the people of this state.

R426-2-2. Requirements for Licensure.

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialities for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration(FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and review each application. After review and before issuing a license to a new air medical service, the Department shall directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of four years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAMTS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAMTS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAMTS certification within one year of receiving a license under this rule.

R426-2-3. Personnel Requirements.

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an Emergency Medical Technician-Intermediate (EMT-I), EMT-Paramedic, Physician's Assistant, Registered Nurse, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, Respiratory Therapist, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and it's in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in speciality education programs required by the air medical service job description(e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate speciality).

(b) Attend continuing education for speciality care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current speciality education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

R426-2-4. Air Ambulance Vehicle Requirements.

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained , and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA- approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self contained interior

lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned, sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended.

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

R426-2-5. Equipment Standards.

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

R426-2-6. Operational Standards.

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control,

emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

R426-2-7. Statutory penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a penalty of up to $5,000 per violation or a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

KEY: emergency medical services
January 23, 2001 26-8
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-6. Emergency Medical Services Competitive Grants Program Rules.

R426-6-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide guidelines for the equitable distribution of competitive grant funds specified under the Emergency Medical Services Grants Program.

R426-6-2. Definitions.

(1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

R426-6-3. Eligibility.

(1) Competitive grants are available for use specifically related to the provision of emergency medical services.

(2) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(3) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-6-4. Grant Implementation.

In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(1) Grant awards are effective on July 1 and must be used by June 30 of the following year.

(2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

R426-6-5. Competitive Grant Process.

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review and prioritization of grant applications. Therefore, copies of grant applications shall be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for a period of at least 30 days for review and prioritization before consideration by the State Grants subcommittee. State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.

(4) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.

(5) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount of 50% of total approved expenditures or a greater amount as annually set forth in the Grant Guidelines.

(7) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS problems.

(8) The Grants Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county prioritization;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

(9) Applications requesting grant award extensions past June 30, must be made to the department by May 30 of the grant year. Requests made after that time will not be accepted. Grants extensions may only be given for unforeseen circumstances.

(10) The Department may withhold payment of grant funds to a grantee that is six months or more in arrears in payments owed to the Department until the overdue payments are paid in full.

R426-6-6. High School Training Program Grant.

(1) The department shall provide a grant by contract with a single non-profit entity for the purpose of teaching the "What To Do Until the Ambulance Arrives" program or a similar program to Utah high school students. Any change to the curriculum of the program must be approved by the Department and the Utah State Board of Education. These programs are limited to Utah high schools for Utah high school students.

(2) The contract will be effective from July 1 through June

30. Contract awards may not be extended or amended.

R426-6-7. Interim or Emergency Grant Awards.

(1) The Grants Review Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Review Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Review Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
January 17, 2001 26-8a
Notice of Continuation December 2, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-7. Emergency Medical Services Prehospital Data System Rules.
R426-7-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule is to establish minimum mandatory EMS data reporting requirements.

R426-7-2. Prehospital Data Set.

(1) Licensees or designees shall collect data as identified by the Department in this rule.

(2) The data shall be submitted to the Department monthly within 30 days of end of the month.

(3) The data shall be submitted in an electronic format determined and approved by the Department. Agencies who respond to less than 10 calls per month may submit data in a Department-approved alternate format.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the agency for corrections, the agency is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:

Patient Last Name
Patient First Name
Incident Number
Service Number
Unit Permit Number
Incident Date
Incident Street
Incident City
Incident State
Incident Zip
Incident County
Time Dispatched
Time Enroute
Time Arrived Scene
Time Left Scene
Time at Destination
Dispatch Code
Patient Age
Patient Race
Patient Gender
Patient Source
ECG Code 1
ECG Code 2
ECG Code 3
Injury Illness 1
Injury Illness 2
Injury Illness 3
Injury Illness 4
Injury Illness 5
Injury Illness 6
Medication 1
Medication 2
Medication 3
Medication 4
Medication 5
Medication 6
Treatment 1
Treatment 2
Treatment 3
Treatment 4
Treatment 5
Treatment 6
Destination Code
Disposition Code
Patient Date of Birth
EMT 1
EMT 2
Location Code
Init Systolic BP
Init Respiration
Init Temperature
Init Pulse Rate
Glasgow Eye Open
Glasgow Verbal
Glasgow Motor
Glasgow Total
Revised Trauma Score (RTS)
Narrative Line 1
Narrative Line 2
Narrative Line 3
Narrative Line 4
Narrative Line 5

R426-7-3. ED Data Set.

(1) All hospitals licensed in Utah shall provide patient data as identified by the Department.

(2) This data shall be submitted at least quarterly to the Department. Corporate submittal is preferred.

(3) The data must be submitted in an electronic format determined and approved by the Department.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the hospital for corrections, the hospital is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:

Unique Patient Control Number
Record Type
Provider Identifier (hospital)
Patient Social Security Number
Patient Control Number
Type of Bill
Patient Name
Patient's Address (postal zip code)
Patient Date of Birth
Patient's Gender
Admission Date
Admission Hour
Discharge Hour
Discharge Status

Disposition from Hospital
Patient's Medical Record Number
Revenue Code 1 ("001" sum of all charges)
Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)
Revenue Code 2 ("450" used for record selection)
Total Charges by Revenue Code 2 (Charges associated with code 450)
Primary Payer Identification
Estimated Amount Due
Secondary Payer Identification
Estimated Amount Due
Tertiary Payer Identification
Estimated Amount Due
Patient Estimated Amount Due
Principal Diagnosis Code
Secondary Diagnosis Code 1
Secondary Diagnosis Code 2
Secondary Diagnosis Code 3
Secondary Diagnosis Code 4
Secondary Diagnosis Code 5
Secondary Diagnosis Code 6
Secondary Diagnosis Code 7
Secondary Diagnosis Code 8
External Cause of Injury Code (E-Code)
Procedure Coding Method Used
Principal Procedure
Secondary Procedure 1
Secondary Procedure 2
Secondary Procedure 3
Secondary Procedure 4, and
Secondary Procedure 5

R426-7-4. Air Medical Service Data Set.

(1) All air medical services licensed in Utah shall provide patient data as identified by the Department.

(2) This data shall be submitted at least quarterly to the Department. Corporate submittal is preferred.

(3) The data must be submitted in an electronic format determined and approved by the Department.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the hospital for corrections, the hospital is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:
Service Number
Unit Permit Number
Incident Number
Multiple Patients
Dispatch Code
Type of Service
Vehicle Type
Incident Street Location
City
County
State
Zip Code
Latitude/Longitude
Type of Location
Patient Source
Factors Affecting Care
Injury/Illness Categories Codes
ICD9 Codes
E Codes
Treatments Given
Reason Destination Was Determined
Safety Equipment Used
Suspected Alcohol and Drugs
Body Fluids Exposure
Resp Rate
Systolic
Glasgow Coma Score
Total for Revised Trauma Score
GCS-Eye Open
GCS-Verbal Response
GCS-Motor Response
Glasgow Total
VS-Initial-Time
VS-Initial-HR
VS-Initial-BP-Systolic
VS-Initial-BP-Diastolic
VS-Initial-Respiration
VS-Initial-Temp
VS-Initial-Pulse Ox
VS-Initial-Glucose
VS-Change-Time
VS-Change-HR
VS-Change-BP-Systolic
VS-Change-BP-Diastolic
VS-Change-Respiration
VS-Change-Temp
VS-Change-Pulse Ox
VS-Change-Glucose
VS-Change-Time
VS-Change-HR
VS-Change-BP-Systolic
VS-Change-BP-Diastolic
VS-Change-Respiration
VS-Change-Temp
VS-Change-Pulse Ox
VS-Change-Glucose
ECG-Initial-Time
ECG-Initial-Rhythm Code
ECG-Repeat-Time
ECG-Repeat-Rhythm Code
ECG-Repeat-Time
ECG-Repeat-Rhythm Code
Medications Given-Time
Medications Given-Code
Medications Given-Dose
Medications Given-Unit of Measurement
Medications Given-Time
Medications Given-Code
Medications Given-Dose
Medications Given-Unit of Measurement

Medications Given-Time
Medications Given-Code
Medications Given-Dose
Medications Given-Unit of Measurement
Medications Given-Time
Medications Given-Code
Medications Given-Dose
Medications Given-Unit of Measurement
Medications Given-Time
Medications Given-Code
Medications Given-Dose
Medications Given-Unit of Measurement
Injury or Onset-Date
Injury or Onset-Time
Dispatch Notified-Date
Dispatch Notified-Time
Unit Notified-Date
Unit Notified-Time
Unit Enroute-Date
Unit Enroute-Time
Arrival at Scene-Date
Arrival at Scene-Time
Arrival at Patient-Date
Arrival at Patient-Time
Left Scene-Date
Left Scene-Time
Arrival at Destination-Date
Arrival at Destination-Time
Back in Service-Date
Back in Service-Time
Motor Function-Left-Moves Arms
Motor Function-Right-Moves Arms
Motor Function-Left-Moves Legs
Motor Function-Right-Moves Legs
Destination Transferred To
Disposition
Patient Last Name
Patient First Name
Patient Middle Initial
Place of Residence Zip Code
Social Security Number
Date of Birth
Sex
Age
Race
On-line Medical Control Physician
Responders-Last Name
Responders-First Name
Responders-Crew Member Type
Responders-Last Name
Responders-First Name
Responders-Crew Member Type
Responders-Last Name
Responders-First Name
Responders-Crew Member Type

R426-7-5. Penalty for Violation of Rule.

As required by Section 63-46a-3(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years is a violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
January 30, 2001 28-8a

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-8. Emergency Medical Services Per Capita Grants Program Rules.

R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds specified under the Emergency Medical Services Grants Program.

R426-8-2. Eligibility.

(1) Per capita grants are available only to licensed EMS ambulance and paramedic services, and designated first response unit and dispatch providers that are:

(a) agencies or political subdivisions of local or state government or incorporated non-profit entities; or

(b) for-profit emergency medical service providers that are the primary emergency medical service provider for a service area.

(2)(a) A for-profit emergency medical service provider is a primary emergency medical service provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

(b) The levels of emergency medical service providers are in this rank order:

(A) Paramedic rescue;

(B) Paramedic ambulance;

(C) EMT-Intermediate;

(D) EMT-IV; and

(E) EMT-Basic.

(c) Paramedic interfacility transfer ambulance, EMT-Interfacility ambulance transport, or paramedic tactical rescue units are not eligible for per capita funding because they cannot be the primary emergency medical services provider for a geographical service area.

(3) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period. If a potential grantee owes the Department money, and the grantee's account is more than six months old, the Department may withhold payment of grant funds until such account is paid in full.

R426-8-3. Grant Implementation.

(1) Per Capita grants are available for use specifically related to the provision of emergency medical services.

(2) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(3) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(4) No matching funds are required for per capita grants.

(5) Per capita funds may be used as matching funds for competitive grants.

R426-8-4. Application and Award Formula.

(1) Grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency per county.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.

(d) The Department shall determine the amounts of the per capita grants by prorating available funds on a per capita basis by county.

(3) The Department shall allocate funds to licensed and designated ambulance and paramecic providers, designated dispatch agencies and designated first response units by using the following point totals for their personnel: certified Dispatchers = 1; certified Basic EMTs and EMT-IVs = 2; certified Intermediate EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated dispatch agency and designated first response unit as of January 1 immediately prior to the grant year, which begins July 1.

KEY: emergency medical services

January 30, 2001 26-8a

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-106. Speciality Hospital - Critical Access.

R432-106-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-106-2. Purpose.

The purpose of this rule is to promote the public health and welfare through establishment of a specialty hospital category for rural hospitals. Its intent is to allow rural communities to: preserve access to primary care and emergency health care services, provide health care services which meet community needs, and help assure the financial viability of program participants through improved reimbursement and different operating requirements. The rule sets standards for the operation of a Critical Access Hospital,(CAH). The standards of patient care apply to inpatient, outpatient, and satellite services.

R432-106-3. Definitions.

For purposes of this rule the definitions in R432-1-3 apply. In addition the following definitions apply:

(1) "Critical Care Access Hospital" means a nonprofit, profit or public hospital that meets the criteria set forth in 42 U.S.C. 1395i-4(c)(2)(B)(1988). Each CAH must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Volume 3, Parts 430 to End, 1999, which is adopted and incorporated by reference. The distance from another hospital may be waived if the facility meets any of the following sub-criteria and is designated as a necessary provider by the state.

(a) An area that meets federal criteria for designation as a Health Professional Shortage Area (HPSA).

(b) A county where the percentage of population age 65 or older exceeds the current state average.

(c) A county where the percentage of families with incomes less than 200% of federal poverty level is higher than the current state average.

(d) A county whose population density meets the "rural"(between 7 and 100 people per square mile) or the "frontier" (6 or fewer people per square mile) definition.

(e) A county where the unemployment rate is higher than that of the state.

(f) An area where, throughout the course of a year, has an increase in population due to the influx of migrant workers or tourists.

(g) Combined acute inpatient days for Medicare and Medicaid beneficiaries, and unreimbursed care patients account for at least 50% of the hospital's total acute inpatient days in the last full year for which data was available.

(2) "Referral Hospital" means a hospital that has sufficient resources to receive emergency or non-emergency patient transfers and referrals from a CAH. Sufficient resources include at least three full-time physicians on staff and licensure as a general hospital.

R432-106-4. Licensure.

A license is required as identified in section R432-2.

R432-106-5. Construction, Facilities, and Equipment Standards.

(1) Each rural hospital, licensed prior to July 1, 2000, which elects to convert to a CAH, may maintain the physical plant which is currently licensed, without having to meet the current construction or building code for a general acute care hospital.

(2) New hospitals constructed as a CAH, or when a CAH is re-modeled, shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

R432-106-6. Critical Access Hospital Swing-Bed Units.

The CAH participating in the swing-bed program may maintain up to 10 swing-beds for care at one time. In addition to R432-106, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules:

(1) R432-150-4, Definitions.
(2) R432-150-12, Resident Rights.
(3) R432-150-13, Resident Assessment.
(4) R432-150-14, Restraint Policy.
(5) R432-150-15, Quality of Care.
(6) R432-150-17, Social Services.
(7) R432-150-20, Recreation Therapy.

R432-100-7. Hospital Rules.

The following sections of R432-100, General Hospital Rules, are adopted and incorporated by reference.

(1) A CAH shall comply with the following:
(a) R432-100-5, Governing Body.
(b) R432-100-6, Administrator.
(c) R432-100-7, Medical and Professional Staff.

Credentialing of medical and professional staff may be performed by a network hospital or a Department approved equivalent.

(d) R432-100-8, Personnel Management Services.
(e) R432-100-9, Quality Improvement Plans.

Quality improvement may be performed by a network hospital or a Department approved equivalent.

(f) R432-100-10, Infection Control.
(g) R432-100-11, Patient Rights.
(h) R432-100-12, Nursing Services.

A qualified registered nurse is not required to be on duty on a 24-hour basis, but shall be on duty if one acute care patient is admitted.

(i) R432-100-16, Emergency Services.

The hospital must make available 24-hour emergency care services, seven days a week, regardless of inpatient census. The CAH shall ensure at least one physician is on call at all times. The 30 minute response requirement is amended to 60 minutes if the CAH qualifies under Section 485.618 (d) (2) of the Federal Conditions of Participation.

(j) R432-100-21, Radiology Services.

Radiology services may be provided off-site through a network hospital or through other arrangements approved by the Department.

(k) R432-100-22, Laboratory and Pathology Services.
(l) R432-100-24, Pharmacy Services.
(m) R432-100-29, Respite Services.

(n) R432-100-31, Dietary Services.
(o) R432-100-33, Medical Records.
(p) R432-100-36, Housekeeping Services.
(q) R432-100-37, Maintenance Services.
(r) R432-100-38, Emergency and Disaster Plans.

(2) If the CAH provides the following clinical or ancillary services then the following shall apply:
(a) R432-100-14, Surgical Services.
(b) R432-100-15, Anesthesia Services.
(c) R432-100-17, Perinatal Services.
(d) R432-100-19, Respiratory Services.
(e) R432-100-23, Blood Services.
(f) R432-100-32, Telemedicine Services.
(g) R432-100-34, Central Supply.
(h) R432-100-35, Laundry Services.

R432-106-8. Rural Health Network.

(1) The participating CAH shall be a member of a rural health network, as evidenced by a signed, written agreement with at least one Referral Hospital that is a member of the network.

(2) The agreement shall address the following:
(a) Patient referral and transfer;
(b) The development and use of communications system; and
(c) Emergency and non-emergency transportation.

R432-106-9. Conversion to a General Hospital.

Within 18 months of conversion to the specialty CAH, a hospital may submit a Request for Agency Action to convert to a General Hospital category without being required to meet the current R432-104, General Construction standards.

R432-106-10. Penalty.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities
January 23, 2001 **26-21-5**
26-21-2.1
26-21-13.6

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Agencies.
R501-7-1. Authority and Purpose.

Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the office of Licensing shall license child placing agencies.

R501-7-2. Objective.

Pursuant to Section 62A-4a-205.6, the primary objective of a child placing agency shall be to place children permanently in adoptive homes. Whenever that is unachievable, foster home placements shall become an acceptable secondary objective.

R501-7-3. Definition.

"Child placing" means the receiving, accepting, or providing of custody or care for a child under 18 years of age. Where possible, this shall be done permanently in accordance with 62A-2-101(2), or on a temporary basis.

R501-7-4. Requirements for Organizations Administration of Child Placing Agencies.

A. Administration

1. In addition to the rules contained herein, all Child Placing Agencies will comply with R501-2, Core Standards.

2. Multiple-Service Agency: When services for birth parents are provided in the same agency that provides adoption services, it is necessary to ensure that full consideration is given to the needs of birth parents, as well as to those of the child. Moreover, the agency shall advertise to the public that it does provide services for birth parents who are not considering adoption, refer to R501-7-6.

3. Selection and Placement: A child placing agency for adoption or foster care shall not:

a. deny to any person the opportunity to become an adoptive or a foster parent on the basis of race, color, or national origin of the person, or of a child, involved; or

b. delay or deny the placement of a child for adoption or into foster care on the basis of the race, color or national origin of the adoptive or foster parent, or of a child, involved.

4. Legal Responsibility for Child: The agency shall be legally responsible for the well-being of the child following relinquishment of the child until the adoption is finalized, or unless the court places legal responsibility with another party. If the child cannot be adopted, the agency shall continue to be legally responsible for the child, i.e., for making referrals to the appropriate service for continuing care until the agency is discharged.

5. Legal and Other Documents: The agency shall have available and keep in a confidential file all pertinent legal and other documents as available and appropriate, including but not limited to the following:

a. birth records,

b. baptismal certificates,

c. an original of the transfer of parental rights or relinquishment,

d. decree of termination of parental rights,

e. copies of divorce papers,

f. death certificates of adoptive family members or birth parents,

g. affidavits in cases where a husband is not the father of the child,

h. statement of the birth parents to release information to mutually agreed upon individuals, or waiver of confidentiality,

i. statements of birth and adoptive parents regarding their agreement to exchange information and the conditions, if any, pursuant to contact following placement and legal adoption, and

j. copy of the order of adoption.

6. Minimum Qualifications of Staff: The Executive Director and other staff of the agency shall meet the standards listed below. Department of Human Services Offices staff will be required to meet the personnel and administrative standards as set by State Personnel Policy.

7. Executive Director:

a. The Board of a private agency shall select the Executive Director and delegate to the Executive Director the responsibility for administration of the agency within the general policies of the Board.

b. The Executive Director of a licensed child-placing agency shall be graduated from an accredited four-year college or university, have a master's degree in social work and shall be licensed in accordance with 58-60-204,105 and 58-60-404,405 as a clinical social worker, certified social worker, or professional counselor. In agencies where the Executive Director does not have the appropriate professional license, there shall be a staff member with the appropriate licensure designated as Social Services Director for the agency.

c. In addition, staff identified shall have had two years of full-time paid professional employment in services to children, in a social service setting; one of which must have been in a supervisory or administrative capacity.

8. Casework Supervisor: If an agency has six or more professional staff besides the Executive Director, provisions shall be made for a certified social worker or professional counselor to supervise the additional staff. The certified social worker or professional counselor must have at least one year of full-time paid professional experience in social work. In general, the ratio shall not exceed one certified social worker or professional counselor to eight caseworkers.

9. Social Service Worker: All service workers shall be licensed to practice social work under the laws of the State of Utah.

10. Workloads: The agency shall establish full time workload standards for staff, taking into consideration average time for satisfactory completion of intake; assessment and preparation of adoptive applicants; and post placement and post legal adoptive services to the birth, adoptive parents and adoptive persons. Under no circumstance shall the workload for social work staff working with children under the age of five exceed 20 active cases; for staff working with prospective adoptive parents prior to approval of the family exceed 30 active cases; for staff working with prospective adoptive parents, following approval exceed 60 active cases; for staff working with birth parents exceed 25 active cases; and for staff working with older or special needs children exceed 15 active cases.

11. Staff Development: The agency shall provide opportunities for staff to enhance professional growth through supervision, in-service training and educational leave. The

agency shall maintain current adoption literature.

12. Ethical Conduct: A child placing agency shall operate in an ethical manner, including the following:

a. Its governing body, voluntary board, staff and consultants are not favored in applying for or receiving the services of the agency.

b. It receives no payment or other considerations for the referral of any applicant or client.

c. It provides no payment or other considerations to any services provider or other organization or individual for any referral of any applicant for the agency's services.

d. It prohibits the directed referral, or steering, of its applicants, clients, and their families to any private practice in which it's staff or consultants may be engaged.

e. It maintains a record of the ownership of all its properties and of all financial transactions it enters into with respect to such properties.

f. The members of the governing body of a private or public agency have no direct or indirect financial interest in the assets or leases of the agency; any member who individually or as part of business or professional firm is involved in the business transactions or current professional services of the agency shall disclose this relationship and shall not participate in any vote taken in respect to such transactions or services.

13. Case Records: The agency shall maintain a case record of each child accepted for care, of the family, and of each adoptive applicant, from the time of the application for service through the completed legal adoption and termination of the agency's service. As a minimum, the record shall contain the following information:

a. application and reason for service,

b. social study,

c. problems and service of the client to these services,

d. progress report, at least quarterly, to include the following,

1) services provided,

2) response of the client to these services, and

3) results,

e. closure, a brief summary of what was accomplished and reason for closure, and

f. dates, places and other pertinent information.

g. Adoptive parents, adoptees, and birth parents shall be encouraged to provide updated information to be added to the file at any time prior to and following finalization proceedings. This updated information may include medical, psychological and social information.

h. Case records shall be continuous records of adjustment, interaction, relationships, physical and mental conditions, growth and development. All records and information shall be confidential.

14. Record Retention: At the completion of the adoption all records pertaining to the adoption must be retained.

15. Confidentiality of Records: All adoption records shall be treated as confidential and be retained in a locked, metal file, accessible to designated personnel only. No formation shall be shared with any person without the appropriate consent forms.

16. Location and Housing: The agency shall be located in an area convenient to the clients it expects to serve. It shall be housed in a setting that is attractive, well maintained and comfortable.

17. Office Space: The facility shall maintain offices to meet the needs of clients being served.

18. Resources: The agency shall have financial resources to support the services offered.

19. Payment of Fees: The agency may charge birth parents and adoptive parents for cost of services provided. However, under no circumstance shall the provision of services to birth parents be contingent upon the ability to pay. A signed fee schedule shall be on file indicating cost of each service. Fees may be charged according to a sliding scale, based upon ability to pay in relation to income or can be set at a uniform amount with a provision in agency policy for reducing or waiving the fee when indicated.

20. Itemization of Expenditures:

An itemization of all allowable expenditures on behalf of birth parents shall be on file. The itemization shall be signed by birth parents and adoptive applicant. If any cost appears to be greater than the ordinary or usual costs, the agency must show that the expenditure was fit and appropriate. The agency may pay reasonable costs for the following:

a. legal services related to the adoption,

b. medical services related to pregnancy, birth, and post-natal care for the birth mother and medical care for the child,

c. emergency health related services for the birth mother needed to protect the health and well-being of the fetus,

d. housing, including utilities and basic telephone service,

e. necessary transportation, including gasoline or public transportation,

f. purchase of food, necessary household supplies, and personal hygiene or grooming products,

g. clothing for the birth mother, and

h. necessary mental health services for the birth mother during the pre and post-natal period.

i. For other expenses the agency must show that the expenditure was fit and appropriate for the birth parents beyond six weeks postpartum.

21. Itemization of Fees for Adoption:

An itemization of all adoption related expenses shall be filed with the court prior to the final decree of adoption.

22. Statistics: The agency shall maintain accurate statistics on persons served, applications, and dispositions as a minimum.

B. Indian Child Welfare Act: An agency which serves Indian children must have standards and procedures which also conform to the Indian Child Welfare Act, refer to pl 95-600.

R501-7-5. Services for Foster Care Program.

An agency's foster care program must meet the following requirements:

A. Best Interests of Child: Foster family care is provided for and in behalf of the child under a plan that includes services for the child, the child's family, and supervision of, and support services for the foster family.

B. Permanent Plans: Agency staff must work actively in coordinating services for children in DHS custody, their families, and foster families to return children to their own homes or to achieve permanent arrangements for their care. The agency must maintain written records which meet requirements of 42U.S.C.675, including a plan for the child's permanent

placement within 60 days of placement.

C. Intake Services: The agency must have a formal procedure for intake, including a procedure to establish the permanent plan for each child in DHS custody.

D. Requirements for Foster Home Approval:

1. Licensed agencies that provide foster or proctor care shall only approve homes that comply with Foster Care Licensing Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

2. Foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and a training plan.

3. The agency must have a procedure to revoke or deny home approval.

4. The agency must have a procedure for a foster parent to apply for a waiver of requirements.

5. The agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

E. Payments: The agency must have a written policy stating the amount and schedule of payment to foster parents for cost of care and services. If the agency makes no payment, the agency shall have a written agreement stating the reasons.

F. Requirements for Placement: The first consideration in placing a child in care shall be the welfare of the child. In determining where a child is placed the agency shall consider proximity to the child's home, placement in the least restrictive setting possible, the ability of the parents to visit; however, the welfare of the child shall override any of these considerations.

G. Foster Care Services: The foster care services provided by an agency shall include:

1. Planning, with participation of the child's biological parents, for care and services to meet the child's individual needs.

2. Planning with biological parents, and with participation of the child where feasible, for stability and permanence in the care of the child. This must include a plan for the parental visits with the child.

3. Providing services to help the child's parents reestablish parental care, maintain parental rights, or where in the best interest of the child, terminate parental rights.

4. Providing a suitable foster family home for the child and planning, with foster parents for the child's supervision, education, health, recreation, and other needs and services. Placement of any child should consider the child's age, behavior, sex, the composition of the foster family, and skills of the foster parents.

5. Obtaining, coordinating, and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

6. Providing ongoing supervision of foster parents to ensure the quality of the care they provide.

H. Termination of Supervision: Supervision of a child by a Division of DHS may only be terminated by court order, unless:

1. The child has been returned to his or her own home and has remained there for a period sufficient to indicate he or she has satisfactorily adjusted to that home;

2. The child has been legally adopted;

3. The child reaches the age of 18, unless the Juvenile Court retains jurisdiction up to age 21; or

4. The Division of DHS transfers responsibility for services to another agency.

R501-7-6. Services for Birth Parents.

A. To ensure that adoption is a suitable plan for the child, and that the interests of children, birth parents, and adoptive parents are protected, comprehensive services must be made available for birth parents, both married and single.

B. Comprehensive services or referral for services, for birth parents shall be provided not as part of an adoption service, but as a separate service geared to the needs of birth parents, including those who are not considering adoption.

C. Support in Planning for the Child:

1. Birth parents shall be supported in making a decision for their child, based on complete and accurate information and without undue delay, including two face-to-face counseling sessions prior to relinquishment.

2. Birth parents shall be informed of their legal rights, obligations, and responsibilities during face-to-face counseling sessions; they should also receive support in considering what their decision will mean to them and to their child.

3. A birth mother shall wait at least 24 hours after the birth of her child before she may give legal consent to the adoption of her child.

4. Birth parents shall be treated with respect, consideration, fairness, and given full recognition of personal dignity and individuality. Birth parents shall be assisted in consideration and determination of whether they want to disclose their identity, or hear about or from the child directly or indirectly in the future.

D. Agencies cannot guarantee confidentiality in any adoption, nor can the agency guarantee any arrangements for contact and exchanges of information between birth parents and adoptive parents. Birth parents and adoptive parents shall be so advised.

E. Social Services to Birth Parents After Termination or Transfer of Parental Rights: Services shall be available to birth parents after their rights and responsibilities are terminated, as well as after the adoption is finalized. The following services shall be provided to birth parents:

1. Help with the relinquishment process and immediate plans for their own lives.

2. A process where newly learned medical or genetic information that is important to the adopted child, birth parents, or adoptive family can be exchanged.

3. Providing non-identifying information on the potential adoptive family, such as age, physical characteristics, educational achievement, family constellation, profession, nationality, health, other non-identifying information, and reason for adopting.

4. Information shall be shared regarding Utah's Mutual Consent Voluntary Adoption Registry.

F. Agency Records: Birth parents shall sign documents of services received during counseling and relinquishment.

G. Determination of Religion in Which the Child is to be Reared:

1. The agency's policies regarding the consideration of religion in the selection of adoptive families shall be made clear to birth parents.

2. Children who have already established some identification with a particular religious faith of their own shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

3. Agencies under religious auspices may choose to establish policies and practices that are consistent with their particular religious faith.

H. Involuntary termination of Parental Rights: The agency shall have the responsibility to initiate termination of parental rights proceedings consistent with the applicable Utah statutes.

I. Relinquishment of Parental Rights for Adoption: Counseling shall be provided to the birth parents who are planning to place their child for adoption so the decision can be made as early as possible. In the case of parents who voluntarily relinquish their parental rights to an authorized child welfare agency, proper legal procedures for the termination of parental rights should be ensured.

J. Emotional Readiness to Relinquish Parental Rights: Documents indicating parental willingness to place the child for adoption shall be signed in accordance with the parents' emotional readiness to make the definitive decision, and not in accordance with the immediate needs of an adoptive family.

K. Duration of Parental Responsibility: Parental legal responsibility shall end when an authorized child welfare agency accepts the relinquishment of parental rights and the parental rights are terminated.

L. Establishment of Paternity: Legal paternity proceedings shall not be required as a condition for adoption services.

R501-7-7. Services for Children.

A. Assessment of Children: When it has been determined that adoption is the best plan for a child, an assessment shall be made within 30 days to obtain information to assist in the placement process.

1. Determine whether the child's needs can best be met in adoptive placement, and if so, what kind of adoptive family should be selected for the child.

2. The evaluation shall be used to assist prospective adoptive families to make their decision about the child and birth family.

3. Provide the child with needed information concerning the birth family when appropriate.

B. Developmental History: A developmental history of the child that is as complete as possible, shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, and if indicated, from nurses, psychologists, and other consultants shall be included. The developmental history shall include the following:

1. birth and health history,

2. early development, particularly indications of the way the child has taken to like, i.e., locomotor development, feeding experiences, temperament, etc.,

3. the child's adaptation to previous living experiences and situations,

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, and separation experiences,

5. determination of the child's cultural and ethnic background and its impact on values and morals, and

6. language skills, including second language capabilities and other talents and interests.

C. Medical Examination: A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents prior to placement:

1. Evaluation of the infant that includes a correlation and interpretation of all available information, such as, genetic, laboratory, etc.

2. Medical care and immunizations.

3. The nature and degree of any existing handicap, complete information about the type of handicap and the concomitant treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care, if so indicated.

D. Psychological Testing: Psychological testing for children should be used selectively and as a tool for observation and diagnosis of current developments, if warranted.

E. Family History: Information should be obtained from the birth parents about their family backgrounds to:

1. Determine whether there are any significant hereditary factors or pathology, including illnesses of the birth mother or father, that may affect the child's development.

2. Assist the adoptive parents and, eventually, the child to understand the family situation, the reasons for adoption, and the birth family histories.

3. Decide, in the case of older children who have lived with their birth families, which characteristics should be given consideration in selecting and preparing for a new family.

F. Evaluation of Children: An interdisciplinary approach based upon the needs of the child is to be used in the selection process either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee.

G. Timing of Adoptive Placement: Infants under the age of two should be placed with their adoptive families at the earliest time possible after being freed for adoption and directly upon release from the hospital in the case of newborns.

H. Placement of Children Over Five Years of Age: When placing children over the age of five, care shall be taken to ensure that an adequate assessment of their needs is made, that they and the adoptive family are prepared for the placement, and a plan is developed to ensure that the needed services are

provided after placement.

I. Temporary Care Before Placement for Adoption: A child that has been freed for adoption and is awaiting placement with an adoptive family shall be placed in a foster home where his or her needs can be met and which can assist in preparing the child for placement in a prospective adoptive home Children awaiting adoptive placement shall only be placed in group or residential treatment programs when the needs are such that they can only be met in such a setting.

J. Responsibility for a Different Permanency Plan: Children that have been accepted for adoptive placement will have a permanency treatment plan developed with a goal of adoptive placement and finalization, and objectives that focus on assisting the family and child during the transition phase to ensure that ongoing services required are obtained.

K. Supervisory Visits: After a child has been placed in the adoptive home, a social worker shall supervise the placement until finalization to assist with the transition and assist the family in obtaining any needed services. At a minimum, three supervisory visits shall be made so the agency can have sufficient information to make a recommendation regarding finalization.

L. Listing with the Adoption Exchanges: Agencies having a child available for adoption who has not been placed within 60 days of being freed, shall document all efforts to screen the child with other Child Placing Agencies and list the child with inter-state Adoption Exchanges to help find an appropriate placement.

M. Preparation of the Child for Placement: Sufficient time and planning must be provided according to the needs of the child. The child should be helped to accept the adoptive placement and should be protected insofar as possible from emotional disturbances associated with sudden separation from a known situation.

1. The child who is old enough to comprehend and take some responsibility should have a part in the decision that adoption is the best plan. The child must know that his or her own parents cannot continue to provide care and must accept separation from them in order to become a part of another family.

2. Before meeting with the adoptive parents, the child should know that placement is under consideration. Should the adoptive family decide not to proceed with placement, the worker will help the child to understand the situation in a manner that will minimize any damage to the child.

3. The child should have the opportunity to become acquainted with the new parents gradually. A series of short visits to the adoptive home before placement can be particularly helpful. Such visits should not take place until after adoptive parents have expressed interest in adopting the child.

4. The number and place of visits with adoptive parents, and the time of placement should be determined by the age and the particular needs of the child and the family.

N. Retention of Records: In an effort to prepare for possible requests for information pertinent to a significant medical or hereditary concern on the part of the adoptive family or adult adoptee, the agency shall maintain in the file, medical, historical and developmental information and records about the child and the birth parents, received prior to finalization.

R501-7-8. Services to Adoptive Parents.

A. Services for Adoptive Parents:

1. Discussion of birth parent's rights, including legal rights of the putative father. Provisions shall be made for accessibility to non-identifying information on the child's birth family. Information shall be made available about Utah's Mutual Consent Voluntary Adoption Registry through the Utah Bureau of Vital Records.

2. Individual and group social work counseling shall be provided to help the adoptive parent evaluate and develop their capacities to meet the needs of the children added to the family. This support should continue into the post-placement period when it is necessary and deemed appropriate. If an agency cannot provide this preparation and support, they are responsible for offering another support for the family.

3. Assistance in the selection of a child whose needs the adoptive parents will be able to meet.

4. Preparation of both the child and family for the placement of the child in the home, including discussion and approval of a subsidy when appropriate.

5. If an agency places a child for adoption, that agency is responsible for the supervision of the placement and continued support to the child and family. The agency shall assist with finalization.

B. Basis for Selection of Adoptive Parents:

1. The agency must have a written process for approval of adoptive homes. The pre-adoptive evaluation shall include a series of interviews with the adoptive applicants in the office and at home. If the family has children or other individuals living in the home, they shall be part of the pre and post adoption evaluation and application process. The applicants shall supply names of at least three non-related references. The applicants must be informed, in writing, as to the acceptance or the denial of their application. This notice must be given in a timely manner with the agency's appeal process.

2. The agency shall select applicants who are able to:

a. provide the continuity of a caring relationship,

b. provide non-identifying or open linkages to the child's birth family if and when appropriate,

c. be informed and sensitive to ethnic, religious, cultural, and racial heritage, and

d. demonstrate an ability to understand the needs of a child at various developmental states.

3. Agencies shall assess each applicant from the perspective of what would be in the best interest of a child.

4. No single factor should be decisive in and of itself.

C. Criteria of Capacity for Adoptive Parenthood, Contents of Home Study Evaluation or Pre-Adoptive Evaluation Eligibility:

1. Assessment of adoptive applicants should be designed to provide the best indication of an applicant's capacity for adoptive parenthood; total personality functioning; emotional maturity; quality of spousal relationship, when applicable; capacity to parent children; attitude toward childlessness and readiness to adopt; and reasons for adoption.

2. The agency must have written standards for approval of adoptive families. These standards must include the following items plus other aspects of lifestyle and behavior which reflect the ability to protect, nurture, and care for the child. Agencies

shall provide adoptive applicants with a realistic description of their services and procedures.

a. Residence: Adoptive applicants shall reside either within the area that the agency can serve directly, or in an area where the agency can procure services through another agency with acceptable standards.

b. Age: Chronological age alone should not be the determining factor for the selection of adoptive applicants. Utah statutes require that the adoptive parents be at least ten years older than the child placed for adoption. Physical condition and life expectancy of the applicants should be taken into consideration to protect the child against a repeated, foreseeable loss of parents through death or incapacitating illness. Also, it is important for applicants to be physically and emotionally capable of meeting the needs of the children as they grow and develop.

c. Marital Status: When applicants are married, husband and wife shall maintain a residence together and the relationship shall be of sufficient duration to give evidence of its stability. Single parents shall be considered in accordance with their ability to meet the needs of available children.

d. Health of Applicant: A medical history and recent physical examination shall be required as evidence that the applicants have reasonable health and life expectancy, and that the applicants have the physical and emotional ability to fulfill the responsibilities of parenthood.

e. Family Income: Adoptive applicant income shall be sufficient in order to provide financial stability and security for a child. Income alone shall not be the determining factor for the selection of adoptive applicants.

f. Housing: Housing and neighborhood shall provide space and living conditions necessary for health, safety, emotional well-being, and self-respect of the family and the adoptive child. Strict space requirements should not be a deterrent to placement if relationships in the family are satisfactory.

g. Religion: Lack of religious affiliation or of a religious faith should not be a bar to consideration of any applicant to meet the specific needs of a child.

h. Applicant Abilities: Consideration shall be given to the ability of the applicant to meet the specific needs of the individual child.

i. Working Parents: Applicants who work outside the home shall not be excluded from consideration as adoptive parents. Consideration shall be given to a plan to provide security and responsible child care adequate to the individual child's needs.

j. Provisions of R501-14 and R501-18 shall be met.

D. Use of Committee in Placement: The final decision to approve a family for the placement of a child should be the responsibility of the professional staff. The decision shall be made by more than one person. The applicants shall be informed in writing of the decision of the committee. If the agency disapproves the applicants for placement, the applicants are entitled tp be informed of this in person and to be given the reasons for the agency decision. They are also entitled to the opportunity to appeal the decision and should be informed of this process in writing. The agency shall maintain a written record of any appeals.

R501-7-9. Services During and After Adoption Placement.

A. Selection of Adoptive Family for Specific Child:

1. The selection of the adoptive family for a specific child shall be made through the use of a multi-disciplinary committee as needed and the final decision shall be based on the family's and the child's suitability for each other. Suitability is determined by the family's ability to meet the individual needs of the child and the capacity of the child to benefit from the family.

2. Consideration for the wishes of the birth parents, the adoptive parents, and the adoptee, when applicable. shall be a part of the selection process.

3. The decision of the committee shall be in writing, signed by all members of the committee, and filed in the case record.

B. Information to Adoptive Parents:

1. Agency adoption fees shall be discussed with the adoptive family prior to starting the application process. A flat fee may be charged for processing application materials, which is not refundable, regardless of whether the family is accepted or not, and an itemized account of the charges shall be made available to the family. Placement fees shall also be discussed with the family prior to applying along with payment schedules, and these fees shall reflect a reasonable cost based on the expenses incurred by the agency.

2. Adoptive parents shall be provided information about the children they adopt and their birth parents, when available, that will help them to:

a. Understand their child, including talents, special needs or problems.

b. Decide whether or not they can accept the child.

c. Feel comfortable about the birth parents and the reasons for placement.

d. Understand their child's heredity, maturation process, and developmental issues related to adoption.

e. Talk to their child about their biological origins.

3. Adoptive parents shall be given full disclosure of information about the birth parents and child with the exception of information deemed by law to be identifying. The information to be shared shall include the following:

a. developmental and behavioral history,

b. level of current development,

c. personality and temperament traits,

d. medical information,

e. ethnic background,

f. cultural hereditary conditions,

g. prior placement history,

h. information about the birth parents that would be helpful for the child to know while growing up, such as physical descriptions, special abilities, and personality traits.

i. Agency staff shall be prepared to review with the adoptive family the above information and to help them relate it to present day and placement consideration for their family.

5. When a Child Placing Agency has a child who requires an adoption subsidy, the agency shall coordinate with the state agency to establish the subsidy. Subsidies shall be paid by the state agency based on state policy. The Child Placing Agency shall discuss the subsidy with the family.

C. Pre and Post Placement Services: The Child Placing

Agency shall provide continuing support and help to the child and his or her adoptive family as needed during the time after placement both before and following the legal adoption. These services shall be recorded and include:

1. The agency shall inform the adoptive family, prior to placement, of the available services, so that the family shall view the services as a source of help and security.

2. The agency has a protective function when the child's custody remains with the agency during the placement prior to finalization, and is responsible for determining that the child's adjustment and development is satisfactory and that the family is able to cope with any difficulties. This may be accomplished through direct services and, when necessary, referring to specialized services.

3. The agency shall provide assistance to the family in helping their child, friends, family members, extended family members, neighbors, schools, etc., understand the adoption process. This shall be accomplished through individual interviews, family counseling services, selected literature, and consultation.

4. The agency shall provide services to the adoptive family that will assist them in understanding their own feelings, the adjustments of adding a child to their family, understanding the complicated feelings of the child, the specialized services that their child may need in the home and out of the home. This shall be accomplished through individual sessions and family support groups.

5. The frequency of home visits, office contacts, telephone calls, and other contacts shall depend on whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems. Early placement visits shall convey the agency's support and readiness to help. A contact soon after placement is essential in building the relationship and shall take place within two weeks of placement. A minimum of three supervisory visits shall take place before finalization, with at least two visits in the home.

6. The length of time between placement and finalization shall be determined by Utah State Law. Finalization shall not take place until the family and the agency have determined that they are ready. The post-placement period, however, shall not go on indefinitely. In each case, a plan shall be made for the time likely to be needed, with an outer limit set.

7. The agency shall consider removal of children before legal adoption only if circumstances impair their security in the family or jeopardize their physical and emotional development. These circumstances might include incompatibility, mental illness, seriously incapacitating illness, or the death of one of the adoptive parents, separation of adoptive parents, abuse, neglect, or rejection of the child, lack of attachment to the child, an unanticipated physical or mental problem of the child, or request by the adopting parents for the removal of the child.

8. The agency shall offer supportive services to maintain the family and document this support. Services may include the following:

a. respite care for the child,

b. counseling services, and

c. family and adoption committee review of placement and planning.

D. Post Adoption Services: Adoption services shall be made available to birth and adoptive parents and adopted persons after the legal adoption. These services shall respond to matters related to the adoption, and will include the following:

1. Information, counseling services within the agency or referral to proper resources for counseling, crisis intervention, respite care, and specialized support groups.

2. Adoptees shall be offered post-legal adoption services that assist them in exploring their attitudes toward themselves as adopted persons.

3. Within the relevant statutes, child welfare agencies shall assist adopted persons who have reached the age of majority in their search for information about, or their wish to establish contact with birth parents, siblings, or other members of their birth family, provided that these persons are willing.

R501-7-10. Adoption and the Community.

A. Adoptions in Relation to Community Child Welfare Programs: Private and public agencies shall:

1. List waiting children with local and regional exchanges.

2. Be active in interpreting child welfare programs and adoption services to assure widest utilization by persons needing the services, and to ensure realistic understanding of services by the public.

3. Participate in any joint inter-agency planning and coordination to maximize programs so that birth parents and adoptive applicants will have freedom of choice and equal opportunity to apply for services, regardless of racial, ethnic, religious group, or ability to pay a fee.

B. Promotion of Adoption Services:

1. Adoption agencies shall inform each potential adoptive parent that children in the custody of the state are available for adoption, and that parents may request the following:

a. Medicaid coverage for medical, dental, and mental health services;

b. Tax benefits or financial assistance to defray the costs of adopting these children;

c. Training and ongoing support for the adoptive parents of these children, and

d. Information about individual children, which may be obtained by contacting the Division offices or its internet site.

2. Adoption agencies shall provide the following information to adopting parents:

a. Notice about children in state's custody;

b. A copy of a pamphlet prepared by the Division of Child and Family Services that explains about adoption of children in the State's custody;

3. Adoption agencies shall establish a method to determine unmet placement needs and a plan to recruit adoptive families when needs are identified.

4. Recruitment efforts shall involve adoptive parents and shall include persons of similar ethnic or racial groups whenever children need to be placed with families of similar ethnic origin. Recruitment efforts shall seek to enlist the involvement of ethnic and cultural minority groups, religious, and other civic groups as needed.

C. Legal Protection Required for Adoption Services: Adoption agency mission statements, policies, and procedures

shall assure that the following legal protections are met:

1. The best interests of the child are paramount.

2. Parental rights and responsibilities are safeguarded.

3. Children are not deprived unnecessarily of either birth parents or a permanent family.

4. Legal responsibility for the child will be clearly established at all times.

5. Children will not be placed in unsuitable families or families detrimental to the child's growth and development.

D. Transfer of Parental Rights:

1. Adoption agency policies and procedures shall assure an orderly adoption process for the following:

a. The legal separation of the child from birth parents.

b. Transfer of custody and guardianship of the child.

c. Consent to a specific adoption.

d. Final transfer of parental rights and duties to the adoptive parents.

2. Agencies shall follow Utah State Statutes regarding the relinquishment of children, termination of parental rights, placement, and finalization procedures.

3. Legal risk adoptions shall be made only when:

a. The child's best interests are served.

b. Adoption is clearly the goal.

c. Termination is likely and able to be obtained in a reasonable time period.

d. Adoptive parents have given written consent, indicating that they are fully informed of the risks involved.

R501-7-11. Interstate or Out-of-Country Adoptions.

A. For interstate placements, adoption agencies shall comply with requirements of the Interstate Compact for Placement of Children.

B. Prior to an adoption or placement with a family out of the state, the agency shall complete a plan with the other agency which defines financial and social services responsibilities.

C. International adoption agencies shall abide by all applicable Federal, State, and Immigration laws and regulations, and shall document that:

1. The child is legally freed for adoption in the country of origin.

2. Information was provided about the physical or mental health of the orphan or abandoned child.

3. Referral information was given to the adopting parents about naturalization proceedings.

4. The country of origin was provided all follow-up information as that country requires prior to final adoption.

5. Agencies which place children in inter-country adoptions shall ensure that the following legal processes occur properly:

a. consent to adoption and transfer of parental rights,

b. legal responsibility for the child in the new country,

c. validity of the adoption in the country of origin, if they are adopted in that country, and

d. application to adopt or re-adopt the child or children in the United States, as applicable.

D. The same standards shall apply to home studies for out-of-country children as for all adoption services.

E. International Adoption Agencies shall do the following:

1. Provide all applicants with policies governing refunds when adoption services that have been promised are not rendered or when there is a disruption of services that may nullify an adoption.

2. Notify adoptive applicants within five working days whenever it receives information that a foreign country is suspending its adoption program.

3. Verify the credentials and qualifications of agents in foreign countries working in their behalf on adoption matters.

4. Disclose data to adoptive applicants on their rates of successful adoptions and requests.

KEY: licensing, human services, child placing
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Notice of Continuation September 2, 1997

R501. Human Services, Administration, Administrative Services, Licensing.
R501-8. Outdoor Youth Programs.
R501-8-1. Outdoor Youth Programs.

The Office of Licensing in the Department of Human Services, shall license outdoor youth programs according to standards and procedures established by this rule.

R501-8-2. Authority and Purpose.

Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing shall license outdoor youth programs. Programs designed to provide rehabilitation services to adjudicated minors shall adhere to these rules as established by the Division of Youth Corrections, in accordance with 62A-7-104-11.

R501-8-3. Definitions.

In addition to terms defined and used in Section 62A-2-101(20), Utah Code:

A. "Consumer" means the minor being provided the service by the program, not the parent or contracting agent that has enrolled the minor in the program.

B. "Escort"means transportation of youth consumers from their home to the program or from the program back to their home or other pre-determined destination by paid adult chaperones.

R501-8-4. Administration.

A. In addition to the following standards and procedures, all outdoor youth programs shall comply with R501-2, Core Standards.

B. Records of enrollment of all consumers shall be on file at the field office at all times.

C. Information provided to parents, community, and media shall be accurate and factual.

D. Programs shall provide an educational component as determined by the Utah State Board of Education for consumers up to 18 years of age who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and cooperate with the local Board of Education.

E. Programs which advertise as providing educational credit to consumers shall be approved by the Utah State Board of Education.

F. The program shall have written procedures for handling any suspected incident of child abuse or Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct violation, including the following:

1. a procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges filed and adjudicated,

2. a procedure for ensuring that a director or member of the governing body involved in or suspected of abuse shall be relieved of their responsibility and authority over the policies and activities of the program, or any other youth program, as well as meet the sanctions as described in 1. above, until the investigation is completed or formal charges are filed and adjudicated, and

3. a procedure for disciplining any staff member or director involved in an incident of child abuse or DHS Provider Code of Conduct violation, including termination of employment if found guilty of felony child abuse, or loss of position, including directorship if found guilty of misdemeanor child abuse.

G. If any director or person in a management position is involved in or suspected of child abuse or neglect, the program shall submit to an extensive review by DHS or law enforcement officials to determine or establish the continued safe operation or possible termination of the program. The licensing review shall be completed within 72 hours.

H. Failure to implement and comply with 1., 2., 3., and G. above will be grounds for immediate suspension or revocation of program license.

I. Until charges of abuse, neglect or licensing violations are resolved, no license shall be issued to any program with owners, silent owners, or any staff management personnel that were prior owners or staff management personnel in a program against which the above charges were alleged.

J. If charges result in a criminal conviction or civil or administrative findings that allegations were true, no license shall be issued to any program with owners, silent owners, or staff management personnel from the prior program.

R501-8-5. Program Requirements.

A. Programs that operate in Utah and one or more other states shall meet the requirements for licensure as established for each of the states.

B. There shall be a written plan for expedition groups, approved by the program governing body, which shall not expose consumers to unreasonable risks.

C. The program shall inventory all consumer personal items and shall return all inventoried items, except contraband, to the consumer following program completion. The consumer shall sign the inventory list at the time of inventory and again when items are returned.

D. The Office of Licensing shall review and approve the program's training plan governing consequences for consumer conduct.

E. Each consumer shall have clothing and equipment to protect the consumer from the environment. This equipment shall never be removed, denied, or made unavailable to a consumer. If a consumer refuses or is unable to carry all of his or her equipment, the group shall cease hiking, and reasons for refusal or inability to continue will be established and resolved before hiking continues. Program directors are responsible to train staff regarding this standard and to regularly monitor compliance. There shall never be a deprivation of any equipment as a consequence. Such equipment shall include the following:

1. sunscreen; the program staff shall ensure appropriate consumer usage,

2. insect repellent,

3. frame or no frame backpack when weight to be carried by each consumer exceeds 20 percent of the consumer's body weight. Consumer shall not be required to carry a load of more than 30 percent of his body weight,

4. personal hygiene items,

5. female hygiene supplies,

6. wool blankets and tarp or poncho for summer months when the average nighttime temperature is 40 degrees F. or above,

7. sleeping bags, shelter and ground pad for winter months when the average nighttime temperature is 39 degrees F. or lower, and

8. basic clothing list to ensure consumer protection against seasonal change in the environment.

F. The program shall provide consumers with clean clothing at least weekly and shall provide a means for consumers to bathe or otherwise clean their bodies a minimum of twice weekly. Female consumers shall be issued baby wipes or similar products for hygiene purposes.

G. Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 95 degrees F. or minus 10 degrees F. including wind chill factor. If a consumer cannot or will not hike, the group shall not continue.

H. Map routes, including anticipated schedules and times shall be carried by the field staff.

I. Field staff shall maintain a common, signed, daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity.

1. The log shall contain the following information; accidents, injuries, medications, behavioral problems, and all unusual occurrences.

2. All log entries shall be recorded in permanent ink.

3. These logs shall be available to state staff.

J. Incoming and outgoing mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

K. Outgoing mail to parents, guardians, or attorneys shall not be read or censored.

L. Incoming mail from parents or guardians shall not be read or censored without written permission from a parent or guardian.

M. All other mail may be restricted only by parental request in writing.

N. All incoming mail may be required to be opened in the presence of staff. Contraband shall be confiscated.

O. All local, state, and federal regulations and professional licensing requirements shall be met.

R501-8-6. Staff, Interns, and Volunteers.

A. All staff, interns, and volunteers shall meet the provisions of R501-14 and R501-18.

B. Each program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program. and shall coordinate office and support services, training, etc,. The executive director shall have, at a minimum, the following qualifications:

1. be at least 25 years of age,

2. have a BA or BS degree or equal training and experience in a related field,

3. have a minimum of two years of outdoor program administrative experience,

4. have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related experience or one year Outdoor Youth Program field experience,

5. demonstrate complete knowledge and understanding of relevant licensing rules, and

6. have completed an initial staff training and field course, see R501-8-8.

C. Each program shall have a program or field director who coordinates field operations, manages the field staff, and operates the field office. The program or field director shall meet, at a minimum, the following qualifications:

1. be at least 25 years of age,

2. have a BA or BS degree or equal training and experience in a related field,

3. have minimum of two years of outdoor program administrative experience,

4. have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related field, or one year Outdoor Youth Program field experience,

5. demonstrate complete knowledge and understanding of relevant licensing rules,

6. have primary responsibility for field activities and visit in the field a minimum of twice weekly,

7. prepare reports of each visit, document conditions of consumers, document interactions of consumers and staff, and ensure compliance with rules,

8. be trained and certified annually in CPR and standard first aid, and

9. have completed an initial staff training and field course, see R501-8-8.

D. Each program shall have field support staff responsible for delivery of supplies to the field, mail delivery, communications, and first aid support. The field support staff shall meet, at a minimum, the following qualifications:

1. be at least 21 years of age,

2. have a high school diploma or equivalency,

3. be trained and certified annually in CPR and standard first aid, and

4. have completed an initial staff training and field course, see R501-8-8.

E. Each program shall have senior field staff working directly with the consumer who shall meet, at a minimum, the following qualifications:

1. be at least 21 years of age,

2. have an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a related field,

3. have six months program field experience or comparable experience which shall be documented in the individual's personnel file,

4. be trained and certified annually in CPR and standard first aid,

5. have completed an initial staff training and field course, see R501-8-8, and

6. be with groups at all times.

F. Each field staff shall meet, at a minimum, the following qualifications:

1. be a minimum of 19 years of age,

2. have a high school diploma or equivalency,

3. have three months field experience or comparable

experience which shall be documented in the individual's personnel file,

4. exhibit leadership skill,

5. be trained and certified annually in CPR and standard first aid, and

6. have completed an initial staff training and field course, see R501-8-8.

G. Each program shall have assistant field staff to meet the required consumer to staff ratio. Assistant field staff shall meet, at a minimum, the following qualifications:

1. be a minimum of 19 years of age,

2. have a high school diploma or equivalency,

3. have two months field experience,

4. exhibit leadership skill,

5. be trained and certified annually in CPR and standard first aid, and

6. have completed an initial staff training and field course, see R501-8-8.

H. Each program shall have a multi-disciplinary team, accessible to consumers which shall include, at a minimum, the following:

1. a licensed physician or consulting licensed physician,

2. a treatment professional who may be one of the following:

a. a licensed psychologist or consulting licensed psychologist,

b. a certified or licensed clinical social worker,

c. a licensed recreation therapist,

d. a licensed marriage and family counselor,

e. a licensed school counselor, or

f. an educator certified in related curriculum.

3. All clinical and therapeutic personnel shall be licensed or certified by the State of Utah.

I. Each program may have program and clinical interns who are learning the program practices while completing educational requirements.

1. Interns shall be a minimum of 18 years old.

2. Initial training program shall be completed by all incoming staff including interns regardless of background experience, except for contract labor, see R501-8-8.

3. Internships shall be a minimum of 21 field days, following any initial training program, see R501-8-8.

4. Clinical interns pursuing licensure shall be under the supervision of a licensed therapist.

5. Program interns shall be supervised by program staff.

6. Field interns shall not supervise consumers at any time.

J. Each program may have program volunteers.

1. Volunteers shall be under direct, constant supervision of program staff.

2. Volunteers shall not be left in the role of supervising consumers at any time.

3. Volunteers shall be at least 18 years of age and meet program guidelines.

R501-8-7. Staff to Consumer Ratio.

A. Each youth group shall be supervised by at least two staff members at all times.

B. In a mixed gender group, there shall be at least one female staff and one male staff.

C. Expedition group size, including staff members, cannot exceed fifteen people with a minimum of a one to four staff to consumer ratio.

D. Volunteers shall be counted as a consumer in figuring staff to consumer ratios.

E. Expedition group size shall not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.

R501-8-8. Staff Training.

A. The program shall provide a means for an initial staff training consisting of a seven day academic curriculum, which includes a four day practicum or field training. Training must be completed before any supervision of consumers occurs. The program shall verify that the trainee has Red Cross or comparable certification in standard first aid and CPR.

B. The program shall also provide a field course consisting of a minimum of 21 days.

C. The initial staff training and field course training shall include instruction in the following topics:

1. counseling, teaching and supervisory skills,

2. water, food, and shelter procurement, preparation and conservation,

3. low impact wilderness expedition and environmental conservation skills and procedures,

4. consumer management, including containment, control, safety, conflict resolution, and behavior management,

5. instruction in safety procedures and safe equipment use; fuel, fire, life protection, and related tools,

6. instruction in emergency procedures; medical, evacuation, weather, signaling, fire, runaway and lost consumers,

7. sanitation procedures; water, waste, food, etc.,

8. specialty instruction as required,

9. CPR, standard first aid, and wilderness medicine; all outdoor youth program staff must be recertified annually in CPR and standard first aid.

10. navigation skills, including map and compass use and contour and celestial navigation,

11. local environmental precautions, including terrain, weather, insects, poisonous plants, response to adverse situations and emergency evacuation,

12. leadership and judgment,

13. report writing, including development and maintenance of logs and journals, and

14. Federal, state, and local regulations, including Department of Human Services, Bureau of Land Management, United States Forest Service, National Parks Service, Utah State Department of Fish and Game.

R501-8-9. Staff Health Requirements.

Prior to engaging in any field activity, all staff shall adhere to the following:

A. All field staff, interns, and volunteers shall have an annual physical examination and health history signed by a licensed medical professional. A recognized physical stress assessment shall be completed as part of the physical examination.

B. Physical examinations shall be reviewed and

maintained by the provider in the staff personnel file.

C. All program staff, interns, and volunteers shall agree to submit to drug and alcohol screening as provided for by federal and state law.

R501-8-10. Consumer Admission Requirements.

A. Consumers shall be at least 13 years of age and no older than 18 years of age and have a current health history which includes notation of limitations and prescriptive medications, completed and submitted within 30 days prior to entrance into the field program and verified by a parent or legal guardian.

B. Admissions screening shall be supervised by a treatment professional before consumer entrance into the field program and shall include the following:

1. a review of consumer social and psychological history with the parent or legal guardian prior to enrollment,

2. an interview with the consumer prior to entrance into the field program, and

3. a review of consumer's health history and physical examination prior to entrance into the field program.

C. Consumer shall have a physical examination within 30 days prior to entrance to field program. Documentation of the examination, on a form provided by the program and signed by a licensed medical professional, shall be submitted to the program within 30 days prior to entrance to field program.

D. A physical examination form shall be provided to the licensed medical professional by the program and the form shall clearly state a description of the physical demands and environment of the program, and require the following information:

1. urinalysis drug screen,
2. CBC, blood count,
3. urinalysis for possible infections,
4. SMA-6, Electrolyte screen,
5. pregnancy test for all female consumers,
6. physical stress assessment based on climate, temperature, age, weight, and sex, and
7. determination by the physician if detoxification is indicated for consumer prior to entrance into field program.

E. Copies of consumer's medical forms shall be maintained at the field office and another copy carried by staff members in a waterproof container throughout the course.

F. Prior to placement in the program, psychological evaluations are recommended for consumers who have a history of chronic psychological disorders.

G. Academic evaluations shall be completed on consumers enrolled in programs that provide academic credits.

H. Upon admission, the consumer shall be given a period of no fewer than three days to become acclimated to the environment. During this time the consumer shall be monitored by staff for any health problems that may be a result of climate change.

R501-8-11. Water and Nutritional Requirements.

A. Six quarts of potable water shall be available per person, per day, minimum, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, access to water shall be available at all times during hiking.

B. In temperatures above 90 degrees F., staff shall make sure consumer intake is a minimum of three quarts of water per day, electrolyte replacement shall be available with the expeditionary group at all times.

C. In temperatures above 80 degrees F., water shall be available for coating consumer's body for the purpose of cooling as needed.

D. Each water cache shall be placed prior to the day the group leaves camp. Water cache location information shall be verified with field staff before the group leaves camp each day.

E. Expedition group shall not depend on aerial drops for water supply. Aerial water drops shall be used for emergency situations only.

F. All water from natural sources shall be treated for sanitation to eliminate health hazards.

G. Each program shall have a written menu describing food supplied to the consumer which shall provide a minimum of 3000 calories per day. There must be fresh fruit and vegetables at least twice a week. Food shall never be withheld from a consumer for any reason. If a consumer refuses to carry food, the group will stop. Food may not be withheld as a punishment. If no fire is available, other food of equal caloric value which does not require cooking shall be available.

1. The menu shall adjust to provide 30-100 percent increase in minimum dietary needs as energy expenditure such as exercise increases, or climate conditions such as cold weather dictate.

2. Food shall be from a balance of the food groups.

3. Forage items shall not be used toward the determination of caloric intake.

4. There shall be no program fasting for more than 24 hours per expeditionary cycle. Multiple vitamin supplements shall be provided daily.

R501-8-12. Health Care.

A. First aid treatment shall be provided in as prompt a manner as the location and circumstances will allow. This includes first aid for injury, illness, and venomous bites.

B. A consumer with an illness or physical complaint beyond standard first aid treatment shall be immediately transported to the appropriate medical professional or facility. Complaints and responses shall be documented in the daily log and treatment notes. Each consumer shall be assessed every 21 days for his physical condition by a qualified professional such as an EMT. Blood pressure, heart rate, allergies, and general physical condition will be checked and documented. Any concerns will be documented, and the consumer will be taken to the appropriate medical professional for treatment. Medical treatment shall be provided by medical personnel and medication provided as needed. There shall be no consequences to a consumer for requesting to see a health care professional or for anything said to a health care professional.

C. All prescriptive and over the counter medications shall be kept in the possession of designated staff and provided to consumers to be used as prescribed.

D. Prescriptive medication shall be administered as prescribed by a qualified medical practitioner who is licensed according to the Medical Practices Act. Staff shall be responsible for the following:

1. supervise self-medication,
2. record medication, including time and dosage, and
3. record effects of medication, if any.

R501-8-13. Safety.

A. First aid kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities. Emergency evacuation equipment shall be on standby.

B. Program shall have a support system that meets the following criteria:

1. Reliable daily two-way radio communications with additional charged battery packs, and a backup system of verbal contact in the event the radio system fails.

2. The support vehicle and base camp shall be equipped with first aid equipment.

3. The support personnel shall have access to all contacts, i.e., telephone numbers, locations, contact personnel, and procedures for an emergency evacuation or field incident.

4. Periods between contacts made by the support staff and field staff shall not exceed 24 hours unless special arrangements are made. Radio contact shall be available from field staff to base camp on a continuous basis.

R501-8-14. Base Camp or Field Office.

A. Each program shall maintain a base camp or field office.

B. Base camp or field office shall be staffed and monitored 24 hours a day during program activities.

C. Base camp or field office staff shall adhere tp the following:

1. maintain current staff and consumer files which include demographics, eligibility criteria, and medical forms as a minimum,

2. maintain a current list of names of staff and consumers in each field group,

3. maintain a master map of all activity areas,

4. maintain copies of each expeditionary route with its schedule and itinerary, of which copies shall be sent to the Office of Licensing and local law enforcement, as requested by these agencies,

5. maintain a log of communications,

6. be responsible for training and orientation, management of field personnel, related files, and records,

7. be responsible for maintaining communications, equipment inspection, and overseeing medical incidents, and

8. provide all information as requested for review by state staff.

R501-8-15. Environmental Requirements.

A. All programs shall adhere to land use agencies requirements relative to sanitation and low impact camping.

B. Consumers shall be instructed daily in the observance of low-impact camping requirements.

C. Personal hygiene supplies shall be of biodegradable materials.

R501-8-16. Emergencies.

A. Each program shall have a written plan or action for disaster and casualties to include the following:

1. designation of authority and staff assignments,

2. plan for evacuation,

3. transportation and relocation of consumers when necessary, and

4. supervision of consumers after evacuation or relocation.

B. The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

R501-8-17. Infectious Disease Control.

The program shall have policies and procedures designed to prevent or eliminate infectious and communicable diseases in the field.

R501-8-18. Escort Policies and Procedures.

There shall be no escort services operated by an outdoor youth program.

R501-8-19. Transportation.

A. There shall be written policy and procedures for transporting consumers.

B. There shall be a means of transportation in case of emergency.

C. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

D. Each vehicle shall be equipped with an adequately supplied first aid kit.

E. When transporting any consumer for any reason, there shall be two staff present at all times, one of which shall be of the same sex as the consumer, except in emergencies.

F. Staff shall adhere to local, state, and federal laws concerning the operation of motor vehicles.

G. Staff and consumers shall wear seat belts at all times while the vehicle is moving.

R501-8-20. Evacuation.

A. Following the wilderness experience, each consumer shall receive a debriefing to include a written summary of the consumer's participation and the progress they achieved.

B. Parents, consumers, and other involved individuals shall be provided the opportunity and encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program for a period of two years.

R501-8-21. Non-Compliance With Rules.

Due to the difficulty of monitoring outdoor programs and the inherent dangers of the wilderness, a single violation of the foregoing life and safety rules may result in immediate revocation of license and removal of consumers from programs pursuant to General Provisions as found in R501-1.

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R501. Human Services, Administration, Administrative Services, Licensing.

R501-17. Adult Foster Care.

R501-17-1. Authority and Purpose.

Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing, hereinafter referred to as Office, shall license adult foster care.

R501-17-2. Objective.

A. These standards are to establish the minimum requirements for licensure of all Department of Human Services, hereinafter referred to as DHS, adult foster care homes.

B. Adult foster care services are provided pursuant to the Division of Aging and Adult Services, hereinafter referred to as DAAS, according to 62A-3-104(2)a.

R501-17-3. Definition.

"Adult foster care" means the provision of care in homes which are conducive to the physical, social, emotional and mental health of disabled or elderly adults who are temporarily unable to remain in their own homes due to abuse, neglect or exploitation as defined in 62A-3-301.

R501-17-4. License Procedure.

Any adult may apply to DAAS or the Office to become an adult foster care provider. The applicant will be provided with an application, a copy of rules and advised of licensing requirements and procedure. The applicant must meet the requirements for a license and for a DAAS contract.

R501-17-5. Adult Foster Care Provider and Family Requirements.

A. Personal characteristics of adult foster care provider and family, at a minimum, shall be as follows:

1. Provider shall be in good health and able to provide physical and emotional care to the consumer.

a. Provider shall have a physical examination by a medical practitioner at initial licensing.

b. Provider shall self-certify his or her personal physical condition annually.

2. Provider shall be an emotionally stable and responsible person 21 years of age or older. Both legally married couples and single individuals, may be adult foster providers.

3. Provider shall have sufficient income to maintain the family and shall not depend solely on the foster care payment.

4. DAAS employees shall not be approved as foster providers. In emergency situations an employee may provide care with approval of the DAAS Regional Director.

5. A provider must follow Office rules and DAAS rules and work cooperatively with the Office, DAAS, State, Court, and law enforcement officials.

6. A provider shall read, sign and follow the current DHS Provider Code of Conduct.

7. A provider shall comply with the requirements of R501-14 and R501-18.

B. Family Composition and Consumer Placement:

1. The number, ages, and gender of persons in the home shall be taken into account as they may be affected by or have an affect upon the adult.

2. Provider shall have no more than six children, including the provider's children under 18 years of age, living in the home.

3. No more than two children under two years of age, shall reside in an adult foster home, including natural children.

4. No more than three unrelated adults shall be placed in the home. Composition may be flexible and consider the needs of each adult and the family or provider.

5. No other programs providing care for children, youth or adults shall operate out of the same home.

R501-17-6. Physical Aspects of Home.

A. The adult foster home shall be located where school, church, recreation, and other community facilities are available or accessible through arranged transportation.

B. The physical facilities of the adult foster home shall be clean, in good repair, and provide for normal comforts in accordance with accepted community standards.

C. The adult foster home shall be free from health and fire hazards.

1. The adult foster home shall have at least one smoke detector on each floor.

2. The adult foster home shall have at least one approved fire extinguisher. The extinguisher shall be serviced annually.

3. The adult foster home shall have at least one adequately supplied first aid kit.

D. There shall be sufficient bedroom space in accordance with the following:

1. rooms are not shared by consumers of the opposite sex, and

2. each consumer shall have his or her own bed none of which shall be portable. Beds shall be solidly constructed, and provided with clean linens at least weekly or when soiled.

3. Bedrooms shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

4. Closet and dresser space shall be provided within the bedroom for the consumer's personal possessions and for a reasonable degree of privacy.

E. Building and grounds:

1. There shall be adequate indoor and outdoor space for recreational activities.

2. All indoor and outdoor areas shall be maintained in a safe and sanitary condition.

3. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

F. Equipment:

1. All furniture and equipment shall be maintained in a safe and sanitary condition.

2. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual consumer needs.

R501-17-7. Nutrition.

A. Daily meals and snacks shall meet the component, quality, and quantity of the Recommended Daily Allowance for adults.

B. The provider shall provide for specialized diet needs as required by the consumer.

C. Sanitary drinking water shall be available at all times.

R501-17-8. Emergency Plans.

A. Provider shall have a written plan of action for emergencies and disasters to include the following:

1. evacuation with a pre-arranged site for relocation,

2. transportation and relocation of consumers when necessary,

3. supervision of consumers after evacuation or relocation, and

4. notification of appropriate authorities.

B. Provider shall have a written plan for medical emergencies with arrangements for medical transportation and care.

C. In case of emergency the provider shall notify the emergency contact person or appropriate authorities.

D. Provider shall notify the consumer's physician and DHS worker of any accidents or injuries which require medical treatment.

E. Other non-medical emergencies shall be reported to the appropriate authorities.

F. The provider shall immediately report any serious illness, injury or death of a consumer to the DAAS Regional office.

R501-17-9. Infectious Disease.

A. The provider shall have policies and procedures designed to prevent or control infectious and communicable diseases in the home.

B. The provider shall receive training in the control of infectious diseases that meet Department of Health criteria.

R501-17-10. Medication.

A. Consumers shall be responsible for administering their own medication.

B. All adult household members responsible for medications shall keep them in a safe and proper place.

C. Medication shall not be discontinued without the approval of the physician. Unusual reactions or side effects shall be reported to the physician.

D. Medication shall not be used for behavior management or restraint unless prescribed by a physician with notification to the DAAS worker.

R501-17-11. Transportation.

A. The provider shall provide or arrange necessary transportation.

B. Transportation shall be provided according to state safety requirements.

C. Drivers of vehicles shall have a valid Utah drivers license and observe Utah State driving regulations.

D. Transportation shall be provided in vehicles which have current registration and safety inspection.

E. There shall be a means of transportation in case of emergency.

F. Each vehicle shall be equipped with an adequately supplied first aid kit and an emergency list which includes the names of occupants and the name, telephone number and address of the provider.

R501-17-12. Behavior Management.

A. The provider shall provide appropriate supervision at all times.

B. The provider shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, refuse rest or visits with family, humiliating or frightening methods to control the actions of consumers.

C. The provider shall inform the DAAS worker of any extreme or repeated behavioral problems.

R501-17-13. Consumer Rights in Adult Foster Care.

A. A description of the consumer's rights and responsibilities shall be provided and explained when the adult is admitted to the home. When appropriate, the adult shall be informed verbally of this policy to his or her understanding.

B. The provider shall adhere to the following:

1. allow the consumer to eat meals with the family, and allow the consumer to eat the same food as the family unless the consumer has a special prescribed diet,

2. allow the consumer to participate in family activities,

3. protect confidentiality of information,

4. not make copies of consumer records,

5. explain consumer responsibilities, including household tasks, privileges, and rules of conduct,

6. not allow discrimination,

7. treat the consumer with dignity,

8. allow the right to communicate with family, attorney, physician, clergyman, and others, except where documented to be clinically contraindicated,

9. have a list of people whose visitation rights have been restricted by legal guardian or DAAS worker,

10. allow the right to send and receive mail, and

11. allow the consumer to manage his or her own fiscal affairs, unless the consumer has an approved representative, i.e., conservator to assist them with the management of his or her money.

R501-17-14. Record Keeping.

A. The provider shall maintain the following:

1. current license certificate,

2. copy of contracts with DAAS,

3. medical report, Form ASP19, and

4. documentation of training.

B. The provider shall maintain a file for each consumer, to include the following:

1. biographical information including a current emergency contact name and telephone number,

2. documentation of each consumer to include the following:

a. physical, visual, and dental examinations,

b. emergencies requiring medical treatment,
c. medication, when applicable, and
d. record of significant expenditures for the consumer.

KEY: licensing, human services
January 16, 2001 62A-2-101 et seq.

R510. Human Services, Aging and Adult Services.
R510-1. Authority and Purpose.
R510-1-1. Authority.

(1) These rules are promulgated in accordance with the following laws:

(a) Older Americans Act, PL 89-73, 42 USC Section 3001 et seq.

(b) Utah Division of Aging and Adult Services, Section 62A, Chapter 3, Parts 1, 2, and 3.

(c) Job Training Partnership Act, 29 USC Section 1503 et seq.

(d) Social Services Block Grant, 45 CFR Parts 16, 74, and 96.

R510-1-2. Purpose.

The purpose of this rule is for clarification of statutory authority and definition problems.

KEY: law, Older Americans Act*
February 29, 1996 62A-3-101 through 62A-3-312
Notice of Continuation January 23, 2001 42 USC Section 3001

R590. Insurance, Administration.

R590-205. Privacy of Consumer Information Compliance Deadline.

R590-205-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505, 15 U.S.C. 6805, empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6820. Title V, Section 505, 15 U.S.C. 6805(b)(2), authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act.

R590-205-2. Purpose.

The purpose of this rule is provide an extension to persons and entities under the jurisdiction of the Utah Insurance Department that are required to adopt policies, procedures, and controls to prevent the unauthorized disclosure of personal nonpublic information relating to their customers under Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827. The extension would give such persons and entities time to comply with the requirements of Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827.

A further purpose of the rule is to avoid the application of Title V, Section 505(c) of the Gramm-Leach-Bliley Act of 1999 that provides that if a state fails to adopt regulations to implement Title V of the federal act, the State shall not be eligible to override any federal insurance customer protections prescribed by a Federal Banking Agency.

R590-205-3. Applicability and Scope.

This rule shall apply to all insurers, producers, and other persons licensed or required to be licensed or required to be authorized, registered or required to be registered or domiciled in Utah pursuant to the Utah Insurance Code. It also applies to unauthorized insurers who accept business through a licensed surplus line broker in Utah, if the surplus line placements are placed pursuant to Section 31A-15-103.

R590-205-4. Definitions.

For the purposes of this rule the commissioner adopts the following definitions:

(1) "Utah Insurance Code" means Title 31A of the Utah Code.

(2) "Licensee" means all insurers, producers, and other persons licensed or required to be licensed or required to be authorized, registered or required to be registered or domiciled in Utah pursuant to the Utah Insurance Code, including but not limited to unauthorized insurers who accept business through a licensed surplus line broker in Utah, if the surplus line placements are placed pursuant to Section 31A-15-103.

R590-205-5. Enforcement.

Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827 shall be enforced by the commissioner with respect to all licensees of the department.

R590-205-6. Compliance Date.

In order to provide sufficient time for licensees to establish policies, procedures and controls relating to the use and disclosure of personal nonpublic information of their customers and to comply with the requirements of Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827, effective November 13, 2000, the commissioner extends the time for compliance for all licensees to July 1, 2001.

R590-205-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law privacy

January 11, 2001 **31A-2-201**
31A-2-202
15 U.S.C 6805

R614. Labor Commission, Occupational Safety and Health.

R614-1. General Provisions.

R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social

security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses"

means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 1999, edition are incorporated by reference.

2. FR Vol. 65, No. 208, Thursday, October 26, 2000, Pages 64281 to and including 64295, "Consultation Agreements: Changes to Consultation Procedures; Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 1999 edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be

investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037
543-1369

ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

BURNS, Tori L.
Salt Lake City, Utah 84102
364-6673

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

KING, Daniel L.
Lake Point, Utah 84074
250-6781

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the

use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)

(2) Doctor

(3) Hospital

(4) Ambulance

(5) Fire Department

(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety

harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such

preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the

Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written

opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not

subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.C. and to make reports under R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by

the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F. (including OSHA Form No. 200 and its predecessor OSHA Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the

Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file

complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier

Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to

employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable

employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal

obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which

may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the

employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects

from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
February 1, 2001 34A-6

R616. Labor Commission, 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 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 (1998).

1. Section I Rules for Construction of Power Boilers and the 2000 Addenda, published July 1, 2000.

2. Section IV Rules for Construction of Heating Boilers and the 2000 Addenda, published July 1, 2000.

3. Section VIII Rules for Construction of Pressure Vessels and the 2000 Addenda, published July 1, 2000.

B. Power Piping ASME B31.1 (1998) and the ASME B31.1b-2000 Addenda, issued September 15, 2000.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998 and the ASME CSD-1a-1999 addenda, issued March 10, 2000.

D. National Board Inspection Code ANSI/NB-23 (1998) and the 1999 NBIC Addendum, published December 31, 1999.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501 (1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997) and the 1998 Addenda, published December 1998.

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. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. 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 63-38-3(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 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-10, 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 63-46b-3(a) and 63-46b-3(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 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

KEY: boilers*, certification, safety
January 3, 2001 34A-7-101 et seq.
Notice of Continuation February 5, 1997

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-4. Determination of Well Categories Under the Natural Gas Policy Act of 1978.

R649-4-1. Definitions.

1. Unless the context specifically requires otherwise, any special words, terms, or phrases used in the Section and not defined in Section 1 have the meanings defined under the Natural Gas Policy Act of 1978 (NGPA), and applicable Federal Energy Regulatory Commission (FERC) rules and regulations.

R649-4-2. Applications.

An operator requesting the classification of a well or reservoir pursuant to the authority granted to the Board by Section 503 of the NGPA, in order to enable the Board to determine the applicable category for any such well or reservoir pursuant to Title 1 of the NGPA, shall:

1. File the original and two copies of a written application made upon forms prescribed by the Board together with supporting documentation, including all information, data, forms, plats, maps, exhibits, and evidence as may be required by the applicable statutes, rules, and regulations. An application may be amended, supplemented, or withdrawn by the applicant at any time prior to the Board determination.

1.1. Complete an individual application as to each well for which a status determination is being requested. If more than one status determination is being requested for a single well, all forms and information required for each requested determination shall be submitted jointly under one application, with notice to the Board that multiple determinations for one well are being sought under the application.

1.2. File an affidavit as to the truthfulness and correctness of all information contained in the application, including all documents, testimony, and evidence attached to or submitted with the application.

1.3. Certify that the purchaser and owners of the natural gas for which the determination is being submitted, have been served by personal delivery or by mail, postage prepaid, with a copy of the application, including a complete FERC Form 121, excluding required supporting documents.

R649-4-3. Notice and Hearing.

1. Upon receipt of an application for a well status determination under the NGPA, the Board shall:

1.1. Notify the applicant of the receipt of the application;

1.2. Determine the completeness of the application. If the application is incomplete in any respect, the Board shall indicate to the applicant the items to be filed which would make the application complete;

1.3. Assign a cause number to each application, determine a hearing date for each complete application, and notify the applicant of the cause number and hearing date;

1.4. Cause notice of hearing to be given.

2. If the same applicant has filed for multiple well determinations or for multiple determinations as to any well, the published notice of hearing may include more than one well or reservoir in one notice.

R649-4-4. Determination and Orders.

1. Following notice and hearing, the Board shall issue a determination and order for each complete application.

2. If no response or protest to the application is filed with the Board, an application may be considered and a determination may be made by the Director or a designated hearing examiner on the basis of sworn testimony, depositions, or affidavits, together with all exhibits, forms, and other matters properly filed with the Board. Such matters shall comprise the transcript of the hearing on which the determination is based.

3. An applicant may also request consideration and a determination by the Director or a designated hearing examiner by filing a letter with the Board agreeing that the determination can be made by the Director without the necessity of an appearance by the applicant. The Board may, however, upon its own motion, require an evidentiary hearing with sworn testimony to be held upon any application following proper notice. In the event the Board determines that a hearing is required, the Board shall notify the applicant at least ten days prior to the scheduled hearing date.

R649-4-5. Notice of Determination.

Within five days after the last day for filing a motion for rehearing, or, if such a motion is filed, within 15 days after it is denied or overruled by operation of law, the Board shall give written notice to the FERC of its determination and order.

KEY: oil and gas law
January 3, 2001 **40-6-1 et seq.**

R651. Natural Resources, Parks and Recreation.
R651-101. Adjudicative Proceedings.
R651-101-1. Authority and Effective Date.

(a) These rules establish and govern the administrative proceedings before the Division or Director, respectively, as required by Section 63-46b-5.

(b) These rules govern all adjudicative proceedings commenced on or after January 1, 1993.

R651-101-2. Definitions.

These definitions are in addition to definitions in Section 63-46b-2.

(a) "Adjudicative proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, permit or license; and judicial review of all such actions. Any matters not governed by Chapter 63-46b shall not be included within this definition.

(b) "Board" means the Board of Parks and Recreation.

(c) "Director" means the Director of the Division.

(d) "Division" means the Division of Parks and Recreation and (as the context requires) its officers, employees, or agents.

(e) "Party" means the Division, Director or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

(f) "Presiding officer" means the Director or an individual or body of individuals designated by the Director, rules or statute to conduct a particular adjudicative proceeding.

(g) "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division, Director or any other person.

The meaning of any other words used shall be as defined in Chapters 41-22, 63-11, 73-18, 73-18a or 73-18b; or any rules subsequently promulgated.

R651-101-3. Designation of Informal Proceedings.

All adjudicative proceedings of the Division or Director are hereby designated as informal proceedings.

R651-101-4. Construction.

(a) These rules shall be construed in accordance with the Utah Administrative Procedures Act, Chapter 63-46b, and supersede any conflicting provision of procedural rules promulgated by the Board or Division.

(b) These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division or Director.

(c) Deviation from Rules

For good cause, and where no party will be prejudiced, the Division or Director may permit a deviation from these rules except where precluded by statute.

(d) Computation of Time

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R651-101-5. Commencement of Proceedings.

(a) Proceedings Commenced by the Division or Director.

All informal adjudicative proceedings commenced by the Division or Director, shall be initiated as provided by applicable statute, Division rules, and Section 63-46b-3(2)(a).

(b) Proceedings Commenced by Persons Other than the Division or Director.

(1) All informal adjudicative proceedings commenced by persons other than the Division or Director shall be commenced by either completing prepared forms requesting agency action on file at the Division or, if no such forms are required to initiate a particular proceeding, by submitting in writing a request for agency action in accordance with Subsection 63-46b-3(2)(c).

R651-101-6. Pleadings.

(a) Pleadings before the Presiding Officer for administrative hearings shall consist of a notice of agency action, a request for agency action, responses and motions together with affidavits, briefs, memoranda of law and fact in support thereof.

(b) Motions may be submitted for the Presiding Officer's consideration on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion shall be accompanied by a short supporting memorandum of fact and law.

(c) Amendments to Pleadings

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R651-101-7. Hearings.

(a) The Division, Director or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Director or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.

(b) Notice of the hearing will be served on all parties by regular mail at least ten (10) days prior to the hearing.

(c) If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall within a reasonable time issue a decision pursuant to Subsection 63-46b-5(1)(i).

R651-101-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R651-101-9. Pre-hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to such other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R651-101-10. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R651-101-11. Parties to a Hearing.

(a) All persons defined as a "party" are entitled to participate in hearings before the Division or Director.

(b) All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R651-101-12. Appearances and Representation.

(a) Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at such time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

(b) Representation of Parties

(1) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(2) Any party may be represented by an attorney licensed to practice in the State of Utah.

R651-101-13. Failure to Appeal--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may continue the matter or may enter an order of default as provided by Section 63-46b-11 or may proceed to hear the matter in the absence of the defaulting party.

R651-101-14. Discovery, Testimony, Evidence and Argument.

(a) Discovery is prohibited and the Division or Director may not issue subpoenas or other discovery orders.

(b) All parties shall have access to information contained in the Division's files of public record and to all materials and information gathered in any investigation, to the extent permitted by law.

(c) Testimony

At the hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings may, but need not, be under oath.

(d) Order of Presentation of Evidence

Unless otherwise directed by the Presiding Officer at a hearing, the presentation of evidence shall be as follows:

(1) When agency action is initiated by a person other than the Division or Director:

(i) person initiating the action,

(ii) respondent (if any), then

(iii) Division staff.

(2) When the Division or Director initiates agency action:

(i) Division staff,

(ii) respondent, then

(ii) other interested parties (if any).

During any hearing a party may offer rebuttal evidence.

(e) Rules of Evidence

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent man in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

(f) Documentary Evidence

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

(g) Official Notice

The Presiding Officer may take official notice of the following matters:

(1) Rules, regulations, official reports, written decisions, orders or policies of the Board, Division or any other regulatory agency, state or federal;

(2) Official documents introduced into the record by proper reference; provided, however such documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(3) Matters of common knowledge and generally recognized technical or scientific facts within the Division's or Director's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

(h) Oral Argument and Memoranda

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R651-101-15. Record of Hearing.

(a) A record of any hearing shall be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the

hearing.

(b) If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R651-101-16. Decisions and Orders.

(a) Report and Order

After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Division or Director review reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for review, reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files and on the facts presented in evidence at any hearings.

(b) Service of Decisions

A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R651-101-17. Agency Review.

Who may file

(a) Where the agency action is taken by a Presiding Officer other than the Director, any aggrieved party may seek review of an order or decision, to the Director as the case may be, by following the procedures of Section 63-46b-12 and the following additional rules. Such review shall be considered a prerequisite for judicial review. The requests for review shall be to the Director, as provided by law.

(b) Filing of Request for Review.

(1) Requests for review of agency action within the statutory or regulatory purview of the Division shall be filed with the Director within ten days after the issuance of the order.

(c) Action on the Request for Review

(1) Where the request for review is to the Director, the request shall be reviewed by the Director.

(2) Unless otherwise provided by law, all reviews shall be based on the record before the Presiding Officer. In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(3) Parties shall not be entitled to a hearing on review, except as allowed by law; provided, however, that the Director may, in his discretion, grant a hearing for their benefit to assist them in the review. Notice of any hearing shall be mailed to all parties at least 10 days prior to the hearing.

(d) Action on Review

Within a reasonable time after the filing of any response, other filings, or after any hearing, the Director shall issue a written order on review which shall be signed by the Director and shall be mailed to each party. The order shall contain the items, findings, conclusions and notices more fully set forth in Subsection 63-46b-12(6)(c).

R651-101-18. Request for Reconsideration.

(a) Who may file

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13 and the following additional rules. Such a request is not a prerequisite for judicial review.

(b) Action on the Request

The Director shall issue a written order granting or denying the request for reconsideration. If such an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R651-101-18. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of such action pursuant to sections 63-46b-14 and 15, except where judicial review is expressly prohibited by statute. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R651-101-20. Declaratory Orders.

An interested person may file a request for agency action requesting that the Division or Director issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Board, Division or Director pursuant to Section 63-46b-21. A request for a declaratory order shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested.

The Division or Director may in their discretion decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such order.

R651-101-21. Emergency Orders.

The Division or Director may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedures

1993	**41-22**
Notice of Continuation January 18, 2001	**41-1a-102**
	63-11
	73-18
	73-18a
	73-18b

R651. Natural Resources, Parks and Recreation.
R651-223. Vessel Accident Reporting.
R651-223-1. Notification Required.

An operator shall immediately and by the quickest means of communication available notify the nearest state park ranger or other law enforcement officer of an accident that involves a vessel or its equipment when one of the following occurs: a person dies or disappears from a vessel under circumstances that indicate death; a person is injured and receives medical treatment beyond first aid; or property is damaged in excess of $500.

This notification shall include:

(a) the date, time, and location of the occurrence;
(b) the name of each person who died or disappeared;
(c) the assigned number of the vessel; and
(d) the name and address of the owner and operator.

R651-223-2. Other Notification.

If the operator cannot provide this notification, then another person on board shall make the notification required in rule R651-223-1.

R651-223-3. Report Required.

The operator, owner, or other person on board shall submit a completed and signed Owner/Operator Boating Accident Report (PR-53A) to the division within 10 days of the accident.

KEY: accidents, boating
1991 73-18-13
Notice of Continuation January 26, 2001

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(n)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(o) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 14 years of age or older may purchase a permit and tag to hunt big game. A person 13 years of age may purchase a permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the permit and tag are issued.

(2)(a) A person at least 14 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or Certificate of Registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Companion Hunting.

(1) A person may take a deer or elk for a person who is legally blind or quadriplegic provided the blind or quadriplegic person:

(a) meets hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) purchases the appropriate permit and tag;

(c) obtains a certificate of registration from the division; and

(d) is accompanied by a companion hunter who has completed a division approved hunter education course as provided in Section 23-19-11 and Rule R657-23.

(2) A person who is legally blind may obtain a certificate of registration from the division by submitting a signed statement by a licensed ophthalmologist, optometrist, or physician verifying that the applicant:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision 20 degrees or less.

(3) A person who is quadriplegic may obtain a certificate of registration from the division by submitting a signed statement by a licensed physician verifying that the applicant is quadriplegic.

(4) The blind or quadriplegic person must be accompanied by the companion hunter at the time of kill and while transporting the deer or elk.

R657-5-7. Special Season Extension for Disabled Persons.

(1) A certificate of registration may be obtained from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is quadriplegic or permanently confined to a wheelchair;

(b) meets hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate permit and tag.

R657-5-8. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-9. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock; or

(c) peace officers in the performance of their duties.

R657-5-10. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-11. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-12. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-13. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a

muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt; or

(iii) livestock owners protecting their livestock.

R657-5-14. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow; except as provided in Section R657-5-15.

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt; or

(iii) livestock owners protecting their livestock.

R657-5-15. Crossbows.

(1)(a) A disabled person who has a permanent, physical disability may use a crossbow to hunt deer, elk or pronghorn during the respective archery hunt dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, provided that person:

(i) applies for and obtains a certificate of registration authorizing the use of a crossbow; and

(ii) provides a physician's statement confirming the disability as defined in Subsection (b).

(b) "Disabled person" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment.

(2)(a) Any crossbow used to hunt deer, elk or pronghorn must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be at least 18 inches long and must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(3) The following equipment or devices may not be used to take big game:

(a) arrows with chemically treated or explosive arrowheads; or

(b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A cocked crossbow may not be carried in or on a vehicle.

R657-5-16. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game may not be authorized to hunt on tribal trust lands. Hunters must observe tribal regulations concerning wildlife while hunting on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building;

(b) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within

one-half mile of a cabin, house, or other building regularly occupied by people; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader in Salt Lake County, south of I-80 and east of I-15.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

R657-5-17. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

R657-5-18. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-19. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section R657-5-6.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-20. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-21. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-22. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-23. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-24. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only between February 15 through August 9;

(b) Untanned hides of legally taken big game may be purchased or sold only between August 20 through February 15;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(3) Subsection (2) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-25. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully purchased as provided in Section R657-5-24; or

(c) shed antlers or horns.

(2) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(3) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-26. Poaching-Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(4)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(5) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-5-27. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and Application Process for General Buck Deer and General Muzzleloader Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry and cooperative wildlife management unit; or

(iii) special limited entry archery elk; or

(iv) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-66(2)(b).

(4) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry; or

(ii) bull elk - limited entry; or

(iii) special limited entry archery elk; or

(iv) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the big game drawing for:

(a) a general buck deer permit - statewide general archery, or by region for general season or general muzzleloader; and

(b) a general muzzleloader elk permit.

(6) A person may not submit more than one application per species as provided in Subsections (3) and (4) , and Subsection (5) in the big game drawing.

(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-30(4) and R657-5-32(1).

(12) To apply for a resident permit, a person must establish residency at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-28. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer and General Muzzleloader Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a $5 nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) a $5 nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the $5 nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the $5 nonrefundable handling fee for each species applied for; or

(b) the $5 nonrefundable handling fee per species, if applying only for a preference point.

R657-5-29. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer and General Muzzleloader Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) Up to four people may apply together for general elk permits in the big game drawing.

(c) Up to ten people may apply together for general deer permits in the big game drawing.

(2) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-30. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime and General Buck Deer and General Muzzleloader Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) limited entry, special limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) general buck deer; and

(f) general muzzleloader elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;

(b) a limited entry, special limited entry, or cooperative wildlife management unit bull elk; or

(c) a limited entry or cooperative wildlife management unit buck pronghorn.

(4) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-31. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime, and General Buck Deer and General Muzzleloader Elk Application Refunds.

(1)(a) Unsuccessful applicants who applied in the initial big game drawing and who applied with a check or money order will receive a refund in May.

(b) Unsuccessful applicants, who applied for remaining permits in the big game drawing and who applied with a check or money order, will receive a refund in July.

(2)(a) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-32. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents, except nonresidents may not purchase resident cooperative wildlife management unit permits.

(2) Applications are available from division offices, through the division's Internet address, and license agents.

(3) The same application form used for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime permits, and for general buck deer and general muzzleloader elk permits in the big game drawing must be used when applying for remaining permits by mail. The handling fees are nonrefundable.

R657-5-33. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless deer, conservation, sportsman and poaching-reported reward deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-34. Waiting Periods for Elk.

(1) A person who obtained a limited entry or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years

may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, special limited entry archery, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman and poaching-reported reward elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-35. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding four years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-36. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-37. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-38. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-33 through R657-5-36 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-39. Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-40. Bonus Point System and Preference Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the big game drawing; or

(ii) each valid application when applying for bonus points in the big game drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(d) Bonus points shall not be awarded for special limited entry archery bull elk or cooperative wildlife management unit spike bull elk.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and Cooperative Wildlife Management unit;

(ii) bull elk - limited entry and Cooperative Wildlife Management unit; or

(iii) buck pronghorn - limited entry and Cooperative Wildlife Management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime Cooperative Wildlife Management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective

species.

(d) A person may only apply for bonus points in the initial big game drawing.

(e) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the initial drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner;

(c) a person obtains a poaching-reported reward permit; or

(d) a person obtains a special limited entry archery elk permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11) Bonus points are tracked using social security numbers or division-issued hunter identification numbers.

(12) Preference points are used in the big game drawing for general buck deer and general muzzleloader elk permits to ensure that applicants who are unsuccessful in the drawing for general buck deer permits and general muzzleloader elk permits, will have first preference in the next year's drawing for the respective species.

(13) A preference point is awarded for:

(a) each valid unsuccessful application when applying for:

(i) a general buck deer permit;

(ii) a general muzzleloader elk permit; or

(iii) each valid application when applying only for preference points in the initial drawing.

(b) Preference points are awarded by species.

(14)(a) A person may not apply in the drawing for both a general buck deer preference point and a general buck deer permit.

(b) A person may not apply in the drawing for both a general muzzleloader elk preference point and a general muzzleloader elk permit.

(c) A person may not apply for a preference point if that person is ineligible to apply for a permit for the respective species.

(d) Preference points shall not be used when applying for or obtaining remaining permits after the initial drawing.

(15) Preference points are forfeited if:

(a) a person obtains a general buck deer permit through the drawing; or

(b) a person obtains a general muzzleloader elk permit through the drawing.

(16)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the initial drawing.

(17) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(18) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

R657-5-41. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit may use archery equipment to take:

(a) one buck deer statewide within a general hunt area, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(c) a deer of hunter's choice within the Uintah Basin extended archery area.

(3) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front and Uintah Basin extended archery areas.

(4) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may take a deer of hunter's choice within the Northern Region general hunt area.

(5) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(6)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season, provided that person obtains a general season or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(7) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-42. General Season Buck Deer Hunt.

(1) The dates for the general season buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general season buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general season buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

R657-5-43. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general season buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-45. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-46. General Archery Elk Hunt.

(1)(a) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The San Juan unit east of U.S. 191 is closed to

general archery and general season bull elk hunting.

(2)(a) A general archery elk permit allows a person using archery equipment to take one elk of hunter's choice in a general season elk unit, except on elk cooperative wildlife management units.

(b) On a spike bull elk unit, archers may take an antlerless elk or a spike bull elk.

(c) In Salt Lake County south of I-80 and east of I-15, archers may take an antlerless elk or any bull elk.

(3) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-47. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(2)(a) General season elk hunters may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

R657-5-48. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(2)(a) A person who has obtained a general muzzleloader elk permit may take one elk of hunter's choice, except a hunter may take only a spike bull or an antlerless elk in a spike bull unit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may hunt only on a spike bull elk unit and may take only a spike bull elk. Any bull units are closed to spike bull permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

R657-5-49. Limited Entry Bull Elk Hunt and Special Limited Entry Archery Bull Elk Hunt.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry elk permit.

(2) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-50(3).

(4)(a) A hunter who obtains a limited entry bull elk permit for one of the hunt units listed in Subsection (b), may also purchase an auxiliary permit to hunt within the area specified on the permit using archery equipment during the established general archery elk season, or using muzzleloader equipment during the established general muzzleloader deer season.

(b)(i) Book Cliffs, Little Creek;

(ii) Book Cliffs, Bitter Creek-South;

(iii) Box Elder, Grouse Creek;

(iv) Cache, Meadowville;

(v) Cache, North;

(vi) Cache, South;

(vii) LaSal, LaSal Mountains;

(viii) Manti, Manti;

(ix) Manti, Nebo;

(x) Nine-Mile, Anthro;

(xi) Oquirrh-Stansbury, North;

(xii) Oquirrh-Stansbury, South Oquirrh;

(xiii) South Slope, Diamond Mountain;

(xiv) Wasatch Mountain;

(xv) West Desert, Deep Creek.

(c) If an elk is not taken during this period, any legal weapon may be used during the dates specified on the limited entry bull elk permit.

(5) To hunt in a special limited entry archery elk area, a hunter must obtain a special limited entry archery elk permit.

(6)(a) A special limited entry archery bull elk permit allows a person, using archery equipment, to take one hunter's choice elk, during the season specified on the permit and within the following units:

(i) Beaver;

(ii) Cache, North;

(iii) Chalk Creek;

(iv) East Canyon;

(v) Kamas;

(vi) LaSal, LaSal Mountains;

(vii) Morgan-South Rich;
(viii) Mt. Dutton;
(ix) Nine-Mile, Range Creek;
(x) North Slope, Summit-West Daggett;
(xi) North Slope, Three Corners;
(xii) Ogden;
(xiii) Paunsaugunt;
(xiv) Plateau, Boulder;
(xv) San Rafael, North;
(xvi) San Rafael, South;
(xvii) South Slope, Yellowstone-Vernal; and
(xviii) Zion.

(b) A person may not hunt in any elk Cooperative Wildlife Management unit located within the units as provided in Subsection (6)(a). Spike bull elk restrictions do not apply to special limited entry archery elk permittees.

(7) A person who has obtained a special limited entry archery bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

(8) Bonus points shall not be awarded or utilized when applying for, or in obtaining, special limited entry archery elk permits.

R657-5-50. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b)provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;
(ii) general archery elk;
(iii) general muzzleloader deer;
(iv) general muzzleloader elk;
(v) limited entry archery deer;
(vi) limited entry archery elk;
(vii) limited entry muzzleloader deer; or
(viii) limited entry muzzleloader elk.

R657-5-51. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

R657-5-52. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-53. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-54. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

R657-5-55. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison

hunt.

(3) The bison permit allows a person using any legal weapon to take a bison within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation. Hunt fees include the handling fee, permit, and transportation on the island. Permittees are required to use these contract services. Permittees are required to furnish their own living quarters and food during their stay.

(c) Individuals accompanying the permittee must pay an additional fee and provide their own reliable four-wheel drive vehicle. Prior arrangements need to be made through the Division of Parks and Recreation.

(5) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

R657-5-56. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

R657-5-57. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

R657-5-58. Depredation Hunter Pool Permits.

(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.

(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year except as provided in Subsection R657-5-50(3).

(b) Hunters with depredation permits for doe pronghorn, antlerless deer or antlerless elk may not possess any other permit for those species, except as provided in Subsections R657-5-27(1)(a) and R657-5-50(3), and the proclamation of the Wildlife Board for taking big game.

(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.

(5) Applications must be sent to the appropriate regional division office for the area requested.

(6) Applications must be received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-59. Antlerless Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained any elk permit, a pronghorn permit, or a moose permit may not apply for an antlerless elk permit, doe pronghorn permit, or antlerless moose permit, respectively, except as provided in Section R657-5-63.

(5) A person may not submit more than one application in the initial drawing per each species as provided in Subsections (2) and (3).

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-61(3) and R657-5-63(4).

(7)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-60. Fees for Antlerless Applications.

(1) Each application must include:

(a) the permit fee for each species applied for; and

(b) a $5 nonrefundable handling fee for each species applied for.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division shall charge a returned check collection fee for any check returned unpaid.

(5) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(6) Any fee errors must be corrected with a money order or cashier's check through the application correction process.

R657-5-61. Antlerless Big Game Drawing.

(1) The antlerless drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-62. Antlerless Application Refunds.

(1)(a) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order will receive a refund in September.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order will receive a refund in October.

(2)(a) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-29(6).

(3) The handling fees are nonrefundable.

R657-5-63. Drawing for Remaining Antlerless Permits and Over-the-counter Permit Sales After the Antlerless Drawings.

(1) The list of remaining permits will be available by the date provided in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Residents and nonresidents may apply for, and draw any of the following remaining permits, except as provided in

Subsection (3):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Any person who has obtained:

(a) an antlerless deer permit may not apply for an antlerless deer permit;

(b) two elk permits may not apply for an antlerless elk permit;

(c) a pronghorn permit may not apply for a doe pronghorn permit; or

(d) a moose permit may not apply for an antlerless moose permit.

(4) Residents and nonresidents may apply for any remaining permits.

(5) The same application form used for the antlerless drawing must be used when applying for remaining permits. The handling fees are nonrefundable.

(6) Applications for remaining permits must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(7) Applicants who apply for remaining permits will not be provided an opportunity to correct a rejected or invalid application on the drawing for remaining antlerless permits.

(8) The drawing results for remaining antlerless permits will be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(9) Permits remaining after both drawings will be sold over-the-counter, in person, or through the mail, on a first-come, first-served basis only at the Salt Lake Division office beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-64. Application Withdrawal.

(1) A person may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(3) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(4) Handling fees will not be refunded.

R657-5-65. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-66. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-40. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-65 through R657-5-70.

R657-5-67. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a $5 nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

R657-5-68. Special Hunt Drawing.

(1) The special hunt drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-69. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-70. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

KEY: wildlife, game laws, big game seasons*

January 16, 2001	**23-14-18**
Notice of Continuation November 30, 2000	**23-14-19**
	23-16-5
	23-16-6

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.

(c) "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.

(d) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(e) "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.

(f) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(g) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(h) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(i) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(j) "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.

(k) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(l) "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.

(m) "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.

(n) "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.

(o) "Motor" means an electric or internal combustion engine.

(p) "Nongame fish" means species of fish not listed as game fish.

(q) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, or any other place of storage.

(r) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(s) "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.

(t) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(u) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(v) "Single hook" means a hook or multiple hooks having a common shank.

(w) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(x) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(y)(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.

(z) "Underwater Spearfishing" means, fishing by a person swimming or diving and using a mechanical device held in the hand which uses a rubberband, spring, or pneumatic power to propel a spear to take fish.

R657-13-3. Free Fishing Day.

A license is not required on free fishing day, the second Saturday of June, annually. All other laws and rules apply.

R657-13-4. Fishing Contests.

(1)(a) A certificate of registration from the division is

required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 13 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

R657-13-5. Interstate Waters.

(1) Lake Powell and Flaming Gorge Reservoir:

(a) The purchase of a reciprocal fishing stamp allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing stamps are offered for Lake Powell and Flaming Gorge Reservoir.

(c) Any person qualifying as an Arizona resident and having in their possession a valid Arizona resident fishing license and a Utah reciprocal fishing stamp for Lake Powell, is permitted to fish within the Utah boundaries of Lake Powell.

(d) Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

(e) Utah residents may obtain reciprocal fishing stamps by contacting the state of Arizona for Lake Powell, and the state of Wyoming for Flaming Gorge.

(f) Nonresidents may obtain reciprocal fishing stamps from division offices and selected license agents.

(g) The reciprocal fishing stamp must be:

(i) signed across the face by the holder as the holder's name appears on the valid fishing or combination license; and

(ii) attached to the fishing or combination license.

(h) Reciprocal fishing stamps are valid on a calendar year basis.

(i) Anglers are subject to the laws and rules of the state in which they are fishing.

(j) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

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 one line is unlawful, except while fishing for crayfish without the use of fish hooks and on selected waters with a valid second pole permit. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) A person may not use or possess hooks, single or multipoint, larger than 9/16 inches at the shortest point, between the shank and the point on specific waters as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(5) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir.

(6) 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 a Second Pole.

(1) A person may use a second pole to take fish only in the:

(a) Bear River from the Idaho state line downstream, including Cutler Reservoir and the outlet canals;

(b) Little Bear River below Valley View highway (SR-130);

(c) Malad River;

(d) Newton Reservoir;

(e) Hyrum Reservoir;

(f) Willard Bay Reservoir;

(g) Pine View Reservoir;

(h) Flaming Gorge Reservoir;

(i) Pelican Lake;

(j) Starvation Reservoir;

(k) Utah Lake;

(l) Yuba Reservoir;

(m) D.M.A.D.;

(n) Gunnison Bend;

(o) Lake Powell; and

(p) Gunlock Reservoir.

(2) A second pole permit is required in addition to a valid annual or short-term fishing license, or combination license and may be obtained for a $10 fee from any division office.

(3) Anglers under 14 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

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) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles 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 setline permit is required in addition to a valid annual fishing or combination license and may be obtained for a $10 fee from any division office.

(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 14 years of age must purchase a valid annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Joe's Valley Reservoir, Ken's Lake, Lost Creek, Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, and Willard Bay Reservoir are open to taking game fish by means of underwater spearfishing from June 1 through September 30. These are the only waters open to underwater spearfishing for game fish.

(4) The bag and possession limit is two game fish. No more than one fish greater than 20 inches may be taken, except at Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

(5) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (3) above and as provided in Section R657-13-14.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to take Bonneville cisco only at Bear Lake.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment, except as provided in Subsection R657-13-14(1)(c) to take fish or crayfish.

(3) A person may not take protected aquatic wildlife by snagging or gaffing; however, a gaff may be used to land fish caught by lawful means, except at Flaming Gorge Reservoir and Fish Lake.

(4) Chumming is prohibited, on all waters except Lake Powell where dead anchovies only may be used for taking striped bass.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. 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)(a) Fishing is permitted with any bait, except corn, hominy, or live fish.

(b) Possession or use of corn or hominy while fishing is unlawful.

(2) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(3) Game fish or their parts may not be used, except for the following:

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Jordanelle,

Newton, Pineview, Rockport, Sevier Bridge (Yuba), Utah Lake and Willard Bay reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake.

(d) The eggs of any species of fish, except prohibited fish, may be used. However, eggs may not be taken or used from fish that are being released.

(4) 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.

(5) 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.

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 chub (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum);

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Leatherside chub (Gila copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Virgin River chub (Gila robusta seminuda);

(n) Virgin spinedace (Lepidomeda mollispinis); and

(o) 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) Except as provided in Subsections (b) and (c), 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.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(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) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3), angling, traps, bow and arrow, liftnets, or seine.

(3) Seines shall not exceed 10 feet in length or width.

(4) 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, 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 one line may have hooks attached (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) Fish held in possession in the field or in transit shall be kept in such a manner that:

(a) the species of fish can be readily identified;

(b) the number of fish can be readily counted;

(c) the size of the fish can be readily measured when the fish are taken from waters where size limits apply and the fish taken from those waters may not be filleted and the heads or tails may not be removed; and

(d) fillets shall have attached sufficient skin to include the conspicuous markings so species may be identified.

(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 person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days

spent fishing.

(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. General Season Dates and Bag 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 general 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) Bag 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 bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, 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 bag 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 person under 14 years of age may:

(a) fish without a license and take 1/2 a bag and possession limit; or

(b) purchase a license and take a full bag and possession limit.

(6) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to general season dates, times, bag 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. Nonresident One-Day Fishing Stamp.

(1)(a) A nonresident may purchase a one-day fishing stamp to extend a one-day or seven-day fishing license provided the nonresident person has obtained a valid Utah nonresident one-day or seven-day fishing license.

(b) A nonresident must present the one-day or seven-day fishing license to the Division or license agent upon purchasing a one-day fishing stamp.

(2) A one-day fishing stamp will extend the one-day or seven-day fishing license within the current year for one additional day.

(3) The effective date shall be indicated on the one-day fishing stamp.

(4) A Wildlife Habitat Authorization is not required to purchase a one-day fishing stamp.

KEY: fish, fishing, wildlife, wildlife law

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	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-17. Lifetime Hunting and Fishing License.
R657-17-1. Purpose and Authority.

(1) Under authority of Section 23-19-17.5, this rule provides the requirements and procedures applicable to lifetime hunting and fishing licenses.

(2) In addition to the provisions of this rule, a lifetime licensee is subject to:

(a) the provisions set forth in Title 23, Wildlife Resources Code of Utah; and

(b) the rules and proclamations of the Wildlife Board, including all requirements for special hunting and fishing permits and tags.

(3) Unless specifically stated otherwise, lifetime licensees shall be subject to any amendment to this rule or any amendment to Section 23-19-17.5.

R657-17-2. Definitions.

Terms used in this rule are defined in Section 23-13-2 and Rule R657-5.

R657-17-3. Lifetime License Entitlement.

(1) (a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual small game, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements as provided in Subsection R657-17-1(2).

(2) In addition to a lifetime license card, each lifetime licensee shall receive without charge, a permit and tag of his choice for one of the following general deer hunts:

(i) general archery buck deer;

(ii) general season buck deer; or

(iii) general muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

R657-17-4. General Deer Permits and Tags.

(1)(a) The division shall, prior to the annual bucks, bulls and once-in-a-lifetime application period, send a Lifetime General Deer questionnaire to each lifetime licensee who is eligible to hunt big game.

(b) The lifetime licensee shall correctly fill out the questionnaire indicating the lifetime licensee's choice of general deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(c) The questionnaire must be returned by mail to the Salt Lake division office and must be received no later than two weeks prior to the posting date of big game drawing.

(2)(a) Except as provided in Subsection (c) and Subsection (d), the division may not issue a permit to any lifetime licensee who was given reasonable notice of the deadline as provided in Subsection (1)(c) and fails to return a complete and accurate Lifetime General Deer questionnaire to the division.

(b) The division shall make a good faith effort to notify any lifetime licensee who has made a material error in completing the questionnaire. However, if the division is unable to contact the lifetime licensee and correct the error, the questionnaire shall be void and the lifetime licensee may not receive a permit, except as provided in Subsection (d).

(c) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the deadline as provided in Subsection (1)(c).

(d) If a lifetime licensee fails to return a Lifetime General Deer questionnaire by the deadline as provided in Subsection (1)(c), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

(e) As used in this section "reasonable notice" means that a Lifetime General Deer questionnaire was sent within a reasonable time before the deadline as provided in Subsection (1)(c) to the most recent address given to the division by the lifetime licensee.

(3) Lifetime licensees must notify the division of any change of mailing address, residency, address, telephone number, physical description, or driver's license number.

R657-17-5. Applying for Limited Entry Permits in the Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) A lifetime licensee may apply for a limited entry permit offered through the bucks, bulls and once-in-a-lifetime drawing using a bucks, bulls and once-in-a-lifetime application published by the division.

(2) Limited entry permit species and application procedures are provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3)(a) If the lifetime licensee applies for and is successful in obtaining a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, a general deer permit will not be issued.

(b) If the lifetime licensee does not draw a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, the general deer permit requested on the Lifetime General Deer Questionnaire shall be issued.

(4) Applying for or obtaining an antlerless deer, antlerless elk, or doe pronghorn permit does not affect eligibility for obtaining a general buck deer permit.

(5) All rules established by the Wildlife Board regarding the availability of big game permits in relation to obtaining general deer permits shall apply to lifetime licensees.

R657-17-6. Hunter Education Requirements -- Minimum Age for Hunting.

(1) The division shall issue a lifetime licensee only those licenses, permits, and tags for which that person qualifies according to the hunter education requirements, age restrictions specified in this Section and Title 23, Wildlife Resources Code of Utah, and revocation orders of a division hearing officer.

(2)(a) Lifetime licensees born after December 31, 1965,

must be certified under Section 23-19-11 to engage in hunting.

(b) Proof of hunter education must be provided to the division by the lifetime licensee.

(3) Age requirements to engage in hunting are as follows:

(a) A lifetime licensee must be 12 years of age or older to hunt small game.

(b) A lifetime licensee must be 14 years of age or older to hunt big game. A lifetime licensee 13 years of age may hunt big game if that person's 14th birthday falls within the calendar year.

R657-17-7. Change of Residency.

(1) A lifetime hunting and fishing license shall remain valid if the licensee changes residency to another state or country.

(2)(a) A lifetime licensee who no longer qualifies as a resident under Section 23-13-2 shall notify the division within 60 days of leaving the state.

(b) The division shall issue the lifetime licensee a new lifetime hunting and fishing license with the change of address after the lifetime licensee surrenders the lifetime hunting and fishing license with the previous address.

(3) A lifetime licensee who does not qualify as a resident shall purchase the required nonresident permits or tags required for hunting, except as provided in Subsection R657-17-3(2).

R657-17-8. Lost or Stolen Lifetime Hunting and Fishing License.

(1) If a lifetime hunting and fishing license is lost or stolen, a duplicate may be obtained from any division office.

(2) The lifetime licensee shall:

(a) present a valid driver's license, identification card, birth certificate, or other form of proper identification;

(b) sign an affidavit stating the lifetime hunting and fishing license was lost or stolen; and

(c) pay a duplicate lifetime hunting and fishing license fee.

KEY: wildlife, game laws, hunting and fishing licenses*

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	23-19-11

R657. Natural Resources, Wildlife Resources.

R657-38. Dedicated Hunter Program.

R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for obtaining a certificate of registration to:

(a) maximize opportunity for recreational deer hunting;

(b) increase public participation in wildlife management programs and projects that are beneficial to wildlife and the division; and

(c) provide courses in hunter ethics or wildlife management principles.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Education course" means a course of instruction provided by the division in hunter ethics or wildlife management principles.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general season or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Participant" means a person who has obtained and signed a certificate of registration for the Dedicated Hunter Program.

(d) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(e) "Wildlife project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other projects or activities that benefit wildlife or directly benefits the division.

(f) "Wildlife Project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1) A person may not participate in the dedicated hunter program if that person has been convicted of any of the following violations of Title 23, Wildlife Resources Code, or any rule or proclamation of the Wildlife Board, or is currently on wildlife license revocation:

(a) a felony;

(b) a Class A misdemeanor in the last five years; or

(c) three or more Class B or Class C misdemeanors in the past five years.

(2)(a) To participate in the program a person must sign and obtain a certificate of registration from the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Each participant must provide proof of having attended an education course before the division may issue the certificate of registration for the program.

(d) A certificate of registration to participate in the program may not be issued to any person after April 1 annually.

(3) Each certificate of registration is valid for a three-year period.

(4)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual archery deer hunt shall pay the adult participant fees.

(5) A certificate of registration authorizes the participant an opportunity to receive annually a dedicated hunter permit to hunt during the general archery, general season and general muzzleloader deer hunts. The dedicated hunter permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(6) Except as provided in Subsection R657-38-7(8), a participant entering the program may take two deer within three years.

(7) A participant may take only one deer in any one year, except as provided in Subsection R657-38-7(8).

(8) The certificate of registration must be signed by the participant and a division representative. The certificate of registration is not valid without the required signatures.

(9) The participant and holder of the certificate of registration must have a valid dedicated hunter permit in possession while hunting.

(10) Certificates of registration are not transferable and expire three years from the date of issuance.

(11) Certificates of registration will not be issued to any person who has previously obtained a certificate of registration if that person has failed to provide the service requirements or fees.

R657-38-4. Dedicated Hunter General Permits.

(1) Participants may hunt during the general archery, general season and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(2) Participants must designate a regional hunt choice on joining the program.

(3)(a) The division shall, prior to January 1 annually, send a form to each participant.

(b) The participant shall fill out this form indicating the participant's regional general buck deer hunt choice.

(c) The form must be returned to the dedicated hunter staff in the Salt Lake Division office and must be received prior to January 15 annually.

(d) If the form is not received by the dedicated hunter staff in the Salt Lake Division office prior to January 15 annually, the participant must obtain a dedicated hunter permit from a division office beginning on the date general deer permits are made available over-the-counter to the general public.

(e) Dedicated hunter permits issued to participants over-the-counter shall be for open regions only.

(f) Participants must submit written notification of any changes to their regional hunt choice to the dedicated hunter program staff in the Salt Lake Division office by April 1 annually.

(4) Participants must notify the dedicated hunter program staff in the Salt Lake Division office of any change of mailing address in order to receive a permit by mail.

(5)(a) Lifetime license holders may participate in the dedicated hunter program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a general archery, general season or general muzzleloader permit as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.

(6) A participant may not exchange or surrender dedicated hunter permits for any other buck deer permits once the dedicated hunter permit is issued and any of the specified general deer hunts have begun.

R657-38-5. Education Course.

(1)(a) The division shall provide an annual education course.

(b) The participant must attend two education courses during the three-year period as provided in Subsection R657-38-9(1)(b).

(c) Completion of an education course is mandatory prior to obtaining a certificate of registration for the program.

(2)(a) The education course shall explain the program in detail to give a prospective participant a reasonable understanding of the program as well as hunter ethics or wildlife management principles.

(3) Education courses are scheduled by regional division offices.

(4) Proof of having completed the education course is provided to the prospective participant upon completion of the education course. Certificates of registration are not issued without verification of having completed the education course.

R657-38-6. Wildlife Projects.

(1)(a) Each participant in the program shall:

(i) provide no fewer than eight hours of service, by August 1 annually, working on a wildlife project or other division approved program or activity; or

(ii) pay a fee of $18.75 for each hour not completed.

(b) Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours.

(c) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife project to provide other forms of service.

(2) Wildlife projects shall be designed by the division, or any other individual or entity and pre-approved by the division.

(3)(a) Wildlife projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved projects and activities at regional offices.

(4) (a) Participants who do not complete annual wildlife project hours by August 1 shall not be sent a dedicated hunter permit through the mail.

(b) A dedicated hunter permit may be issued by a regional division office after service hours are completed or paid for.

(c) Dedicated hunter permits issued to participants who fail to make the August 1 deadline annually shall be for open regions only.

(5) Proof of the number of hours worked shall be provided to the participant.

(6) If a participant fails to fulfill the service requirement for any year of participation, the participant will not be issued a dedicated hunter permit for that year. The participant may obtain a permit for subsequent years upon completion of the service requirements due or payment of the fee in lieu thereof.

(7) The wildlife project manager shall keep a receipt of all participants who attend the wildlife project and the number of hours worked. A copy of the receipt shall be returned by the participant for record keeping purposes.

R657-38-7. Obtaining Other Permits.

(1)(a) Participants may apply for or obtain premium limited entry, limited entry, cooperative wildlife management unit, landowner or area conservation buck deer permits as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) Participants may not apply for or obtain general deer permits through the big game drawing as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(2)(a) If the participant obtains premium limited entry, limited entry, landowner or conservation buck deer permit, the participant must surrender their dedicated hunter permit prior to the opening day of the general archery deer season.

(b) If the participant fails to surrender the dedicated hunter permit prior to the opening day of the general archery deer season, any other deer permits obtained by the participant shall be deemed invalid.

(3) If the participant obtains a any weapon limited entry, landowner or area conservation general season buck deer permit, the participant may use the permit in the prescribed area:

(a) provided the participant surrenders any dedicated hunter permit prior to the opening day of the general archery deer season;

(b) during the season dates listed on the permit; and

(c) during the dates prescribed for archery and muzzleloader hunts for the specific unit.

(4) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(5) If the participant is successful in drawing a limited entry archery or muzzleloader buck deer permit, the participant may use the permit in the prescribed area during the season dates listed on the permit.

(6) The permit must be on the person while hunting.

(7) Obtaining a limited entry, cooperative wildlife management unit, landowner or area conservation buck deer permit does not authorize a participant to take an additional deer.

(8) Participants who obtain a cooperative wildlife management unit permit may hunt on the cooperative wildlife management unit only during the dates determined by the landowner/operator, provided the participant surrenders any dedicated hunter permit prior to the opening day of the general archery buck deer season.

(9)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of tags issued pursuant to this program.

R657-38-8. Reporting Requirements.

(1) Each participant must annually report to the division:

(a) whether a deer was taken; and

(b) any other information requested by the division.

(2) The report must be received by the dedicated hunter program staff in the Salt Lake Division office annually by January 15.

(3) Any dedicated hunter buck deer permit and tag that is not used to tag a deer must be received with the report by the dedicated hunter program staff in the Salt Lake Division office. If the unused tag is not received with the report, the permit shall be considered to have been filled.

(4) The division shall make report forms available to participants.

R657-38-9. Contractual Obligations.

(1) In addition to incorporating the provisions of this rule, the certificate of registration shall expressly state the terms of the program including the following:

(a) The participant shall agree to perform the required service hours working for the division or other organizations as approved by the division. The hours shall be completed during the times prescribed by the division. If the participant is unable to perform the required service hours, a fee of $18.75 shall be paid for each hour not completed. Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours. The service hours shall be performed or a fee paid even in the event the certificate of registration is revoked or the participant withdraws from the program. The participant shall also agree to pay court costs and attorney fees associated with collecting any unpaid balance;

(b) The participant shall agree to attend two education courses during the three-year period, one of which must be completed before the division may issue the certificate of registration for the program, and the second education course must be completed during the second or third year, and prior to obtaining a permit to hunt deer in the third year of participation;

(c) The participant shall agree to attend at least one regional advisory council meeting prior to obtaining a permit in the second year of participation; and

(d) The participant shall agree not to purchase or obtain, or attempt to purchase or obtain, any buck deer permit in Utah, except as allowed under the provisions of this rule until after the expiration date of the certificate of registration.

(2) In addition to the terms provided in Subsection (1), the division may require the participant to agree to other provisions consistent with this rule for the administration of this program.

R657-38-10. Dedicated Hunter Program Drawing.

(1) Any unfilled dedicated hunter permit may be entered into a drawing.

(2) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits entered.

(3) The results of the drawing shall be published at division offices.

(4)(a) The division shall make the date and time of the drawing available to the public.

(b) Successful participants are notified by mail.

(5)(a) The limited entry deer permits may be used within the boundaries of the limited entry deer hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(b) The limited entry elk permits may be used within the boundaries of the limited entry hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(6)(a) Successful participants shall incur the appropriate waiting period for the species drawn as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) Successful participants will not forfeit any bonus points as a result of drawing a permit through the dedicated hunter drawing.

R657-38-11. Revocation.

(1) A permit and tag may not be issued to any participant who:

(a) does not perform the annual service requirement;

(b) does not attend a regional advisory council meeting pursuant to Subsection R657-38-9(1)(b); or

(c) violates the terms of the certificate of registration.

(2) The division may revoke or suspend a certificate of registration as provided in Section 23-19-9.

(3) Dedicated hunters are subject to all rules and proclamations of the Wildlife Board.

KEY: wildlife, hunting, recreation, ethics
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R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division shall use all revenue derived from conservation permits for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a specific species, and may include an extended season, or legal weapon choice, or both, beyond the general season.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units, and Area Conservation permits issued for general season hunt areas are not valid on cooperative wildlife management units or limited entry units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1(2).

(d) "Sportsman Permit" means a harvest permit authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(e) "Statewide Conservation Permit" means a permit which allows a permittee to hunt:

(i) big game species on any open unit from September 1 through December 31, except pronghorn and moose from September 1 through October 31;

(ii) turkey on any open unit from April 1 through May 31;

(iii) any other small game species on any open unit during the season authorized by the Wildlife Board;

(iv) bear on any open unit during the season authorized by the Wildlife Board for that unit; and

(v) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective.

R657-41-3. Method for Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each big game and small game species for which limited permits are available.

(3) A limited number of area conservation permits may be authorized, with a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area, unless a higher number is specifically authorized by the Wildlife Board.

(4) The number of conservation and sportsman permits available for use during the following year will be determined by the Wildlife Board annually.

(5) Area Conservation permits shall be deducted from the number of public drawing permits.

(6) One sportsman permit may be authorized for each statewide conservation permit authorized.

R657-41-4. Obtaining Conservation Permits.

(1) Statewide and area conservation permits are available to eligible conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities.

(2) Conservation organizations may apply for conservation permits by sending an application to the division for each permit requested.

(3) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended;

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(e) the type of permit and species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4)(a) Conservation organizations must include the information as provided in Subsection (b) or (c).

(b) The proposed bid amount for each permit. The proposed bid amount is the revenue the organization anticipates to be raised from the auction or fund raising activity. The recommended minimum permit bid amount is listed in Table 1.

(i) The basis for the bid amount must include the conservation organization's experience in similar activities,

and details of the marketing plan.

TABLE 1
RECOMMENDED MINIMUM PERMIT BID AMOUNT

Species	Statewide	Area
Rocky Mountain Bighorn (Ram)	$30,000	$20,000
Desert Bighorn (Ram)	30,000	20,000
Buck Deer	10,000	2,000
Bull Elk	10,000	4,000
Bull Moose	10,000	3,000
Bison (Hunter's Choice)	5,000	5,000
Rocky Mountain Goat (Hunter's Choice)	5,000	3,000
Buck Pronghorn	2,000	1,000
Black Bear	2,000	1,000
Cougar	2,000	500
Turkey	350	250

(c) A specific project proposal that includes:

(i) a schedule for project completion;

(ii) the benefits to the identified species;

(iii) justification for the conservation organization retaining more than ten percent of the revenue, showing increased benefit to the species, over remitting the funds to the division. Under this option, the division must receive the cost of the permit.

(iv) Proposals which integrate well with the division's species plans and objectives will be given emphasis in the evaluation.

(5) An application which is incomplete or completed incorrectly may be rejected.

(6) The application of a conservation organization that has not fully reported on the preceding years conservation permits may be rejected.

(7) The division shall recommend the conservation organization to receive each of the conservation permits based on:

(a) first, the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) if returning the bid amount to the division, at least 90% of the bid amount;

(iii) if retaining the bid amount for projects, at least 90% of the bid amount, multiplied by the percent the project integrates with species plans and objectives; and

(iv) organizations must maintain a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the amount returned to the division, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) second, if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) third, if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(8)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw their application for any given permit or exchange their application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws it's bid and the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(9) The Wildlife Board will make the final assignment of conservation permits at a meeting prior to December 1 annually, based on the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife; and

(d) previous performance of the conservation organization.

(10) The division and conservation organization receiving the permits shall enter into a contract.

(11)(a) The conservation organization receiving permits shall certify that the permits are distributed by lawful means.

(b) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(c) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the Bucks, Bulls and Once-In-A-Lifetime Drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(d) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(i) the conservation organization selects the new recipient of the permit;

(ii) the amount of money received by the division for the permit is not decreased;

(iii) the conservation organization relinquishes to the division 90% of all proceeds generated from the alternate permit transfer or uses the funds for projects authorized by the division pursuant to this rule;

(iv) the conservation organization and the initial designated recipient of the permit, must sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(v) the permit has not been issued by the division to the first designated person.

(e) Except as otherwise provided under Subsection (c) and (d), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf

of another person who will be identified as the original designated recipient.

(12) All permits must be marketed by September 1, annually.

(13) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the funds due to the division; and

(c) a report on the status of each project contained in the application.

(14) Permits shall not be issued until funds due to the division are received. Ten percent of the auction or fund raising activity amount may be retained by the conservation organization for administrative expenses. If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization.

R657-41-5. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain goat (hunter's choice)

(f) bull moose; and

(g) buck pronghorn.

(2) The following information is provided in the proclamation of the Wildlife Board for taking big game:

(a) hunt dates;

(b) open units or hunt areas;

(c) application procedures;

(d) fees; and

(e) deadlines.

R657-41-6. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits

January 16, 2001 23-14-18

Notice of Continuation November 30, 2000 23-14-19

R657. Natural Resources, Wildlife Resources.

R657-42. Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38, the division may issue licenses, permits, tags and certificates of registration in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;

(b) surrender of licenses, certificates of registration and permits;

(c) refund of licenses, certificates of registration and permits; and

(d) reallocation of permits.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

R657-42-3. Permit Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the license, certificate of registration or permit to any division office.

(2) Any person who has obtained a license, certificate of registration or permit may surrender the license, certificate of registration or permit prior to the season opening date of the license, certificate of registration or permit for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable; or

(b) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds of Licenses, Certificates of Registration and Permits.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with Section 23-19-38.

(2) All refunds must be processed through the Salt Lake Division office.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits, that person may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Division Error Policy.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season opens for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private Cooperative Wildlife Management Unit

permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if biologically consistent with unit objectives, to address errors in accordance with the Division Error Policy.

(b) The division shall not allocate additional Cooperative Wildlife Management Unit and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with the Division Error Policy.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, money orders, cashier's checks, and cards are accepted for payment of licenses, permits or certificates of registration.

(2) Personal checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks and credit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(d) Handling fees are charged to the credit card when the application is processed. Applicable license and permit fees are charged after the drawings, if successful.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(8) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(9) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(10) Any person who fails to pay the required fee for any license, permit or certificate of registration, shall be ineligible to obtain any other license, permit, tag, or certificate of registration until the delinquent fees and associated collection costs are paid.

KEY: wildlife, permits

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Notice of Continuation November 30, 2000 23-19-38

R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used, or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or institution, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2000 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 1999 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 1999 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.5 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

The following UBC appendix chapter is adopted:

Chapter 3 - Division IV, Requirements for Group R, Division 4 Occupancies.

1.6 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-4-3, et seq.

The following UFC appendix chapters are adopted:

(a) Appendix I-C Stairway Identification.

(b) Appendix III-C Inspection, Testing and Maintenance of Water Based Fire Protection Systems.

(c) Appendix IV-A Interior Floor Finish.

(d) Appendix VI-A Hazardous Materials Classifications.

(e) Appendix VI-E Reference Tables from the Uniform Building Code.

1.7 Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as published by the International Fire Code Institute (IFCI).

The following UFCS standards are amended as follows:

(a) UFCS 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, 1998 edition.

(b) UFCS 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, 1996 edition.

(c) UFCS 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, 1995 edition.

(d) UFCS 79-1, Foam Fire Protection Systems is amended to adopt NFPA, Standard 11, 1994 edition.

(e) UFCS 82-1, Liquefied Petroleum Gas Storage is amended to adopt NFPA, Standard 58, 1995 edition.

1.8 International Mechanical Code (IMC), 1998 edition, a copyrighted work owned by the International Code Council, Inc., and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.9 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

"AWWA" means American Water Works Association.

"Board" means Utah Fire Prevention Board.

"Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

"Fire Chief or Chief of the Department" means the AHJ.

"Fire Marshal" means the AHJ.

"Fire Department" means the AHJ.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"IMC" means International Mechanical Code.

"LSC" means Life Safety Code.

"NEC" means National Electric Code.

"NFPA" means National Fire Protection Association.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UCA" means Utah State Code Annotated 1953 as amended.

"UFC" means Uniform Fire Code.

"UFCS" means Uniform Fire Code Standards.

R710-4-3. Amendments and Additions.

3.0 The following amendments and additions are hereby adopted for those buildings under the jurisdiction of the State Fire Marshal:

3.1 Door Closures

3.1.1 UFC, Article 11, Section 1111.2.2 Operation. Add the following Exception. In Group E Occupancies, Divisions 1 and 2, the door closures may be of the friction hold-open type on classrooms only.

3.2 Dumpsters

3.2.1 UFC, Article 11, Section 1103.2.2, with reference to Group E Occupancies, is amended to add the following requirement:

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet) or greater shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.

3.3 Fire Alarm Systems

3.3.1 General Provisions

The following rules pertain to newly installed systems or changes made to existing systems, except where noted:

(a) Presignal feature type systems are prohibited, except in I-3 Occupancies.

(b) Fire alarm system designs submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.

3.3.2 Required Installations

(a) Fire alarm systems shall be provided as required in UFC, Article 10, Section 1007, and LSC Chapters as adopted, and in other rules promulgated by the Board.

(b) All state-owned buildings, college and university buildings, other than institutional, with an occupant load of one hundred (100) or more, all schools with an occupant load of fifty (50) or more, shall have an approved fire alarm system with the following features:

(1) Products-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.

(2) In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

(3) Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

(4) The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.3.3 Main Panel

(a) An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

(b) The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.4 System Wiring

(a) System Wiring shall be in accordance with the following:

(1) The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

(2) The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

(3) Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

(b) All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.3.6 Fan Shut Down

(a) The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

(b) Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in UFC, Article 10, Section 1001.4 and 1001.5. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.4 Fireworks

3.4.1 UFC, Article 78, Section 7802.3 is amended to include the following Exception:

Exception No. 3. The use of fireworks for display and retail sales is allowed as set forth in the "Utah Fireworks Act", as adopted in Title 11, Chapter 3, Utah Code Annotated 1953.

3.5 Health Care Facilities

3.5.1 LSC Chapters 12 and 13 Sections 12-1.2.4 and 13-1.2.4 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter 13, Section 13-3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.6 Hydrants, Fire

3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

3.7 Fire Sprinklers

3.7.1 Class 1 and Class 2 fire protection systems, as defined in AWWA, M14, Second Edition, "Recommended Practice for Backflow Prevention and Cross-Connection Control," shall be provided with a listed alarm check valve with standard trim.

3.7.2 Antifreeze systems installed in Class 1 and Class 2 fire protection systems shall be installed as required in NFPA, Standard 13, and a backflow preventing device shall be installed as required in the Uniform Plumbing Code.

3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall

provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-7-2.1.

3.9 Fire Drills

3.9.1 UFC, Article 13, Section 1303.3.3.2(1)is amended to include the additional Exception:

Exception No. 2. A fire drill in secondary schools shall be conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, public buildings
January 16, 2001 53-7-204
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.

R710-6. Liquefied Petroleum Gas Rules.

R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 1998 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1999 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 501C, Standard on Recreational Vehicles, 1996 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 Uniform Fire Code (UFC), Volume 1, Article 82, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.5 Uniform Fire Code (UFC), Volume 2, Uniform Fire Code Standards (UFCS), No. 82-1 and No. 82-2, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.6 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.7 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.8 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.9 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Division" means the Division of the State Fire Marshal.

2.4 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.5 "IFCI" means International Fire Code Institute.

2.6 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.7 "LPG" means Liquefied Petroleum Gas.

2.8 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.9 "NFPA" means the National Fire Protection Association.

2.10 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.11 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.12 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.13 "UCA" means Utah State Code Annotated 1953 as amended.

2.14 "UFC" means Uniform Fire Code.

2.15 "UFCS" means Uniform Fire Code Standards.

R710-6-3. Licensing.

3.1 Type of license.

Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

Class IV: Those businesses listed below:

(a) Dispensers

(b) Sale of containers greater than 96 pounds water capacity.

(c) Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made in writing, on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

(a) The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

(b) Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

(1) Carburetion
(2) Dispenser
(3) HVAC/Plumber
(4) Recreational Vehicle Service
(5) Serviceman
(6) Transportation and Delivery

4.4 Initial Examinations.

(a) The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

(b) The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

(c) To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

(d) Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

(e) As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made in writing on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original

certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

(a) The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

(b) The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

(c) The certificate holder is responsible to complete the 25 question re-examination and return it to the Division in sufficient time to renew.

(d) The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

(a) Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

(c) It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

(a) The name and address of the applicant.

(b) The physical description of applicant.

(c) The signature of the LP Gas Board Chairman.

(d) The date of issuance.

(e) The expiration date.

(f) Type of service the person is qualified to perform.

(g) Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

(a) No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

(b) A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(c) Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

(d) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

(a) Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

(d) The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed forty five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having

authority and management of a concern commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application, whether original or renewal.

(c) Refusal to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

(d) The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

(e) The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

(f) The person or applicant refuses to take the examination.

(g) The person or applicant has been convicted of any of the following:

(i) a violation of the provisions of these rules;

(ii) a crime of violence or theft; or

(iii) a crime that bears upon the person or applicant's ability to perform their functions and duties.

(h) The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6-6. Fees.

6.1 Fee Schedule.

TABLE

(a)	License and LPG Certificates (new and renewals):	
(1)	License	
(A)	Class I	$300.00
(B)	Class II	300.00
(C)	Class III	70.00
(D)	Class IV	100.00
(2)	Branch office license	225.00
(3)	LPG Certificate	30.00
(4)	LPG Certificate (Dispenser--Class B)	10.00
(5)	Duplicate	30.00
(b)	Examinations:	
(1)	Initial examination	20.00
(2)	Re-examination	20.00
(3)	Five year examination	20.00
(c)	Plan Reviews:	
(1)	More than 5000 water gallons of LPG	90.00
(2)	5,000 water gallons or less of LPG	45.00
(d)	Special Inspections.	
(1)	Per hour of inspection (charged in half hour increments with part half hours charged as full half hours).	30.00
(e)	Re-inspection (3rd Inspection or more)	250.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

(a) Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

(b) When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes

adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

(a) All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

(b) If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

(c) The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

(d) The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

(a) Those excluded from the act in UCA, Section 53-7-303.

(b) Containers under federal control.

(c) Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

(d) Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 UFC Amendments:

(a) UFC, Section 8201 - Scope. On line 4 after the wording "Appendix B." insert the following: "Also reference NFPA, Standard 58, as amended by the Board".

(b) UFC, Section 8202.1 Permits and Plans. On line 2 after the word "see" replace "Section 105, Permit 1.1" with "the adopted LPG rules". The rest of UFC, Section 8202.1 is deleted.

(c) UFC, Section 8202.2 - Records., is deleted.

(d) UFC, Section 8203.1 - General. Starting on line 2, after the wording "installed in accordance with" insert "NFPA Standard 58, NFPA Standard 54, and".

(e) UFC, Section 8204.1 General. On line 3 delete "and subject to the approval of the chief." and replace it with "as amended by the Board".

(f) UFC, Section 8204.2 on line 4 after the word "areas" insert "as determined by the Board".

(g) UFC, Section 8208 - Smoking and Other Sources of Ignition. On line 1 replace "chief" with "enforcing authority".

(h) UFC, Section 8212.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1.

8.6 UFCS 82-1 Amendments:

(a) The amendments listed in Part I, Section 82.101 are deleted.

(b) The 1989 edition of NFPA, Standard 58 listed in Part II is deleted and replaced with the 1998 edition of NFPA, Standard 58.

8.7 NFPA, Standard 58 Amendments:

(a) NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.

(b) NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner. Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

(c) NFPA, Standard 58, Section 2-2.1.5 is deleted and rewritten as follows: All cylinders shall be filled, continued in service, and transported in accordance with USDOT regulations. Any cylinder which is out of the qualification date, to include privately owned or personally transported cylinders, shall not be refilled until requalified by methods prescribed in USDOT, 49 CFR, Subchapter C - Hazardous Materials Regulations, Parts 171-180.

(d) NFPA, Standard 58, Section 2-2.1.9 is deleted and rewritten as follows: Repair or alteration of containers shall comply with the latest edition of the National Board Inspection Code or the API Pressure Vessel Inspection Code as applicable. Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

(e) NFPA Standard 58, Sections 2-4.3(c)(1) and (2) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be

used in exterior LP Gas piping systems only.

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

TABLE

(a)	Concern failure to license	$210.00 to $900.00
(b)	Person failure to obtain LPG Certificate	$30.00 to $90.00
(c)	Failure of concern to obtain LPG Certificate for employees who dispense LPG	$210.00 to $900.00
(d)	Concern doing business under improper class	$140.00 to $600.00
(e)	Failure to notify SFM of change of address	$60.00
(f)	Violation of the adopted Statute or Rules	$210.00 to $900.00

9.2 Rationale.

(a) Double the fee plus the cost of the license.

(b) Double the fee plus the cost of the certificate.

(c) Double the fee plus the cost of the license.

(d) Double the fee.

(e) Based on two hours of inspection fee at $30.00 per hour.

(f) Triple the fee.

KEY: liquefied petroleum gas
January 16, 2001 53-7-305
Notice of Continuation October 25, 1996

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention Law.

R710-9-1. Title and Authority.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

R710-9-2. Definitions.

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certification Council" means Utah Fire Service Certification Council.

2.5 "Division" means State Fire Marshal.

2.6 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.7 "LFA" means Local Fire Authority.

2.8 "Liaison" means Fire Academy Liaison.

2.9 "NFPA" means National Fire Protection Association.

2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.11 "Plan" means Fire Academy Strategic Plan.

2.12 "SFM" means State Fire Marshal.

2.13 "Standards Council" means Fire Service Standards and Training Council.

2.14 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee.

2.15 "UCA" means Utah Code Annotated, 1953.

2.16 "UFC" means Uniform Fire Code.

2.17 "UFCS" means Uniform Fire Code Standards.

R710-9-3. Specific Editions of the Fire Code and Standards.

3.1 The Uniform Fire Code (UFC), Volume 1, 1997 edition, excluding appendices, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.

3.2 The Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference, as a set of standards that are specifically referred to within various sections of the UFC. The following Uniform Fire Code Standards are amended as follows:

a. Uniform Fire Code Standard 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, Standard for Portable Fire Extinguishers, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

b. Uniform Fire Code Standard 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, National Fire Alarm Code, 1996 edition.

c. Uniform Fire Code Standard 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems Code, 1995 edition.

d. Uniform Fire Code Standard 79-1, Foam Fire-Protection Systems is amended to adopt NFPA, Standard 11, Low Expansion Foam, 1994 edition.

e. Uniform Fire Code Standard 82-1, Liquefied Petroleum Gas Storage and Use is amended to adopt NFPA, Standard 58, LP Gas Code, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

3.3 National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-4. Conduct of Board Meetings.

4.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

4.2 A quorum shall be required to approve any action of the Board.

4.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

4.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

4.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

4.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

4.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-5. Procedures to Amend the Uniform Fire Code.

5.1 All requests for amendments which would be less restrictive than the adopted edition of the UFC, shall be submitted to the division to be presented to the Board.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next meeting of the Board.

5.3 Upon presentation of a proposed amendment, the

Board may:

a. make a recommendation to accept the proposed amendment as submitted or as modified by the Board;

b. make a recommendation to reject adoption of the proposed amendment;

c. make a recommendation to submit the proposed amendment to an ad hoc committee or formal organization for further study; or

d. make a recommendation that the proposed amendment be returned to the requesting agency, accompanied by Board comments, for the purpose of reconsidering and resubmitting the proposed amendment with modification.

5.4 The ad hoc committee or organization assigned a proposed amendment shall report its recommendation to the Board within forty-five (45) days after the proposed amendment is submitted to that committee or organization.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting.

5.6 The Board may reconsider any request for amendment, or reverse or modify any previous action by majority vote.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

6.1 Class K Portable Fire Extinguishers

UFC, Section 1006.2.7, 1997 edition, and NFPA, Standard 10, Section 2-3.2, 1998 edition, is deleted and replaced with the following:

a. Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

b. Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use until July 1, 1999, and then shall be replaced with a Class K rated portable fire extinguisher.

6.2 Door Closures

UFC, Section 1111.2.2 Operation. Add the following Exception: In Group E Occupancies, Divisions 1 and 2, door closures may be of the friction hold-open type on classroom doors only.

6.3 Fireworks

UFC, Section 7802.1 is amended to include the following Exception: 4. The use of fireworks for display and retail sales is allowed as set forth in the "Utah Fireworks Act", as adopted in Title 11, Chapter 3, UCA.

6.4 Liquefied Petroleum Gas

UFC, Section 8212.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1, 1995 edition.

R710-9-7. Publications of Amendments to the Uniform Fire Code.

7.1 The division shall publish a list of amendments to the UFC, that have been granted by the Board.

7.2 The division shall make available to any person or agency copies of these amendments upon request, and may charge a reasonable fee for multiple requests from a person or agency in accordance with the provisions of UCA, Section 63-2.

R710-9-8. Local Ordinances.

8.1 The legislative body of a political subdivision shall provide to the Board within forty-five (45) days after passage, a copy of any ordinances enacted that are more restrictive than the adopted fire code.

8.2 The division shall maintain an indexed copy of these ordinances for the Board.

8.3 The division shall publish an indexed list of these ordinances that have been made by political subdivisions.

8.4 The division shall make available to any person or agency copies of these ordinances upon request, and may charge a reasonable fee for multiple requests from a person or agency.

R710-9-9. Enforcement of the Rules of the State Fire Marshal.

9.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

9.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

9.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

(a) Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

(b) Public and private schools.

(c) Privately owned colleges and universities.

(d) Institutional occupancies as defined in Section 9-2 of this rule.

(e) Places of assembly as defined in Section 9-2 of this rule.

9.5 The Board shall require prior to approval of a grant the following:

(a) That the applying fire agency be actively participating in the statewide fire statistics reporting program.

(b) The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-10. Fire Service Standards and Training Council.

10.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

10.2 This Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve three year terms, and shall consist of the following members:

(a) a member of the Utah State Fire Chiefs Association.

(b) a member of the Utah State Firemen's Association.

(c) a member of the Utah Fire Marshal's Association.

(d) a specialist in hazardous materials representing the Hazardous Materials Institute.

(e) a fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

(f) a specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

(g) a representative from the International Association of Firefighters.

(h) a representative from the Utah Fire Service Certification Council.

(i) a representative from the fire service that sits on the Utah State Emergency Medical Services Committee.

(j) a representative from the training officers association or a training officer recommended by the Fire Academy.

10.3 The Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. The majority of the Council shall be present to constitute a quorum.

10.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

10.5 If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled Council meetings, it is considered grounds for dismissal pending review by the Board. The Liaison shall submit the name of the Council member to the Board for status review.

10.6 A member of the Council may have a representative of their respective organization sit in proxy of that member, if submitted in writing and approved by the Liaison prior to the meeting.

10.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the Council at regularly scheduled Board meetings. The Liaison may report to the Board the activities of the Council in the absence of the Chair or Vice Chair.

10.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

R710-9-11. Fire Prevention Board Budget Sub-Committee.

11.1 There is created a Fire Prevention Board Budget Sub-Committee whose makeup shall be appointed from members of the Utah Fire Prevention Board.

11.2 Membership on the Sub-Committee shall be by appointment of the Fire Prevention Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

11.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

11.4 The Sub-Committee shall review the Academy's budget to insure that the budget is being properly dispersed according to the contract, shall review the proposed budget for the next contract year, and report their findings to the Board.

R710-9-12. Utah Fire Service Certification Council.

12.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

12.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

12.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

12.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

12.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

12.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

R710-9-13. Utah Fire and Rescue Academy Strategic Plan, Utah Fire and Rescue Academy, and Fire Academy Liaison.

13.1 The Utah Fire and Rescue Academy Strategic Plan shall be the document used each year by the Board to analyze the continuing mission, short and long range goals, and overall objectives of the Utah Fire and Rescue Academy.

13.2 The proposed Academy contract shall be developed using accepted budgetary practices and shall parallel the established overall objectives of the Plan.

13.3 The Board shall direct the Liaison to coordinate with all interested fire officials, fire organizations, and the Academy, the updating of the Plan every two years beginning in the year 2000.

13.4 The Board shall review each new edition of the Plan to insure that the Plan is acceptable and satisfies the

changing training needs of the fire service.

13.5 A copy of the Plan shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

13.6 The fire service training school shall be known as the Utah Fire and Rescue Academy.

13.7 The Director of the Utah Fire and Rescue Academy shall report to the Board the activities of the Academy at regularly scheduled Board meetings.

13.8 The Academy Director may recommend to the Board new or expanded standards regarding fire suppression, fire prevention, fire education, safety, certification, and any other items of necessary interest to the Board about the Academy.

13.9 The Academy shall receive approval from the Board, after being presented to the Standards Council, any substantial changes in Academy training programs that vary from the Academy contract.

13.10 The Academy Director shall provide to the Board by October 1st of each year, a numerical summary of those students attending the Academy in the following categories:

(a) Those participating in the certification process and those who have received certification during the previous contract period.

(b) Those working towards and those who have received an Associate in Fire Science in the previous contract period.

(c) Those who have completed other Academy classes during the previous contract period.

13.11 The Academy Director shall provide to the Board by October 1st of each year, a numerical comparison of the categories required in Section 13.10, comparing attendance in the previous contract period.

13.12 The Academy Director shall provide to the Board by October 1st of each year, in accepted budgeting practices, a cost analysis of classes provided by the Academy, and the cost per student to the Academy to provide those classes.

13.13 The Academy Director shall provide to the Board by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

(a) Non-fire service personnel enrolled in college courses.

(b) Volunteer or career fire service personnel enrolled in college credit courses.

(c) Volunteer or career fire service personnel enrolled in non-credit continuing education courses.

13.14 The Academy Director shall present to the Fire Academy Liaison by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

13.15 The Liaison shall act as staff support for the Utah Fire Prevention Board in matters relating to the Academy contract.

13.16 The Liaison shall conduct Academy budget reviews, Academy performance audits, and review the activities of the Academy to determine effectiveness of the Academy.

13.17 The Liaison shall report to the Board completion of the training agreements covered in the contract, non-completion of those training agreements, budgetary items, audits, and any other items of necessary interest or concern to the Board about the Academy.

13.18 The Liaison, in cooperation with the representative from the Attorney General's Office, shall present to the Board by March of each year, the proposed Academy contract for the next fiscal year.

13.19 The proposed Academy contract shall be reviewed by the Liaison for its compliance with the Utah Fire and Rescue Academy Strategic Plan and accepted budgeting practices. The Liaison shall report to the Sub-Committee and the Board the findings of this review.

R710-9-14. Deputizing Persons to Act as Special Deputy State Fire Marshals.

14.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

14.2 Special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancies listed in the Fire Prevention Law.

14.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

14.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

14.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-15. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-16. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-17. Adjudicative Proceedings.

17.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

17.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the UFC, the appealing party may petition the Board to act as the board of appeals.

17.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

17.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the

LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

17.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

17.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

17.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

17.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

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January 16, 2001 53-7-204
Notice of Continuation June 19, 1997

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-300. Concealed Firearm Permit Rule.

R722-300-1. Purpose.

The purpose of this rule is to set forth the process whereby the Criminal Investigations and Technical Services Division administers the Concealed Weapons Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Subsection 53-5-704(17).

R722-300-3. Definitions.

Terms used in this rule shall be defined as follows:

A. "Affidavit" means a written statement made under oath before a notary public.

B. "Approved firearms instructor" means a person approved by the Division who can certify that an applicant meets the general firearm familiarity requirement of Subsection 53-5-704(8)(a) and is an instructor who is certified pursuant to Section R724-4-14.

C. "Board" means the Concealed Weapons Review Board referred to in Section 53-5-703.

D. "Concealed" means that which is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

E. "Crime of violence" means any crime defined as such in Subsection 76-10-501(2)(b).

F. "Division" means the Criminal Investigations and Technical Services Division of the Utah Department of Public Safety.

G. "Domestic violence" means any of the crimes listed in Subsection 77-36-1(2) when committed by one co-habitant against another.

H. "Equivalent experience with a firearm through participation in law enforcement" means experience showing that the applicant has within the last five years met the firearms requirement of his/her department as evidenced by verifiable documentation from his/her department.

I. "Equivalent experience with a firearm through participation in the military" means experience showing that the applicant has within the last five years successfully met the firearms requirements of his/her military organization as evidenced by verifiable documentation from his/her military organization, provided that such training meets the requirements of Subsection 53-5-704(8)(a).

J. "Equivalent experience with a firearm through participation in an organized shooting competition" means experience showing that the applicant has within the last five years competed in an organized shooting competition as evidenced by verifiable documentation from the organization sanctioning or conducting the organized shooting competition, provided the organized shooting competition meets the requirements of Subsection 53-5-704(8)(a).

K. "Felony" means any criminal conduct other than those crimes defined as misdemeanors or infractions by the statutes of this state. It also includes any criminal conduct that is punishable by more than one year in prison by a federal statute, or by the statute of some other state.

L. "Mitigating circumstances" means circumstances which reduce culpability for purposes of assessing good character.

M. "Moral turpitude" means a conviction for criminal conduct under the statutes of this state or any other jurisdiction involving any of the following offenses:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. robbery;
6. aggravated robbery;
7. bribery;
8. perjury;
9. extortion;
10. arson or aggravated arson;
11. criminal mischief;
12. falsifying government records;
13. forgery;
14. receiving stolen property;
15. firearms violations;
16. burglary or aggravated burglary;
17. vandalism;
18. kidnaping, aggravated kidnaping, or child kidnaping;
19. crimes involving unlawful sexual conduct as described in Title 76, Chapter 5, Part 4, Chapter 5a, Chapter 7, Part 1, and Chapter 10, Part 13; and
20. violations of the pornographic and harmful materials and performances act, as defined in Title 76, Chapter 10, Part 12.

N. "Offenses involving the use of alcohol" means any of the following offenses:

1. any violation of Sections 41-6-44 through 41-6-44.20;
2. violations of Title 32A, Chapter 12, Part 2 involving the illegal use or consumption of an alcoholic beverage; and
3. a violation of 76-10-528.

O. "Offenses involving the use of narcotics" means any offense involving the use, possession, manufacturing or distribution of any narcotic or drug as defined in Title 58, Chapter 37, 37a, 37b, 37c, 37d, and 37e or a violation of 76-10-528.

P. "Past pattern of behavior" means verifiable incidents, with or without an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others.

R722-300-4. Application For a Concealed Firearm Permit.

A. Application for a permit to carry a concealed firearm shall be made in writing to the Division on forms provided by the Division. An application package shall include:

1. a completed application form;
2. proof that the applicant is 21 years of age or older at the time application is made;
3. evidence of general familiarity with the types of firearms to be concealed, verified by a signed certificate from an approved firearms instructor;

4. a five-year employment history;
5. a five-year residential history;
6. two letters of character reference;
7. two recent color photographs of passport quality, measuring 2"x 2"; and
8. two completed fingerprint cards.

B. An applicant shall pay a non-refundable processing fee of $59.00 at the time the application is filed. This fee consists of $35.00 mandated by Section 53-5-707 and a $24.00 Federal Bureau of Investigation finger print processing fee. Payment shall be in the form of cash, cashier's check, or money order. The Division is not responsible for cash lost in the mail.

C. An applicant may request an interview prior to submitting the application. The Division may require an interview subsequent to the submission of the application.

D. A background investigation shall be conducted on all applicants to determine if they are of good character as required by Section 53-5-704. The background investigation shall consist of:

1. verifying the accuracy of the application information;
2. checking the applicant's criminal history through local, state and national computer files which include:
   a. Utah computerized criminal history;
   b. national crime information center;
   c. Utah law enforcement information network;
   d. drivers license information;
   e. statewide warrants file;
   f. criminal justice juvenile files;
   g. criminal history expungement system; and
   h. national instant check system (when available).
3. The fingerprint cards will be sent to the FBI for a review of the applicant's criminal history record pursuant to Sections 53-5-704 and 706.

E. The Division will review all the above information and approve or deny the application.

1. Notice of approval may be given by telephone or in writing.
2. Notice of denial shall be given in writing and shall state the reasons for denial.

F. Renewal of a permit to carry a concealed firearm is required every two years.

1. The renewal form is available from the Division.
2. A renewal applicant shall pay a non-refundable fee of $5.00 as required by Section 53-5-707. Payment shall be made in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

G. A peace officer who has honorably retired from full-time employment within five years of making application shall be exempt from the following requirements:

1. two letters of character reference; and
2. two sets of fingerprints.

R722-300-5. Temporary Concealed Firearm Permit.

A. To be eligible to obtain a temporary permit to carry a concealed firearm, as provided for in Section 53-5-705, an applicant must:

1. apply for a permit under Section 53-5-704;
2. apply for a temporary permit under Section 53-5-705;
3. demonstrate good character; and
4. prove to the satisfaction of the Division extenuating circumstances justifying the need for a temporary permit.

B. Provisions regarding denial, suspension or revocation of a temporary permit are set forth in Subsection R724-4-18(F).

R722-300-6. Out-of-State Concealed Firearm Permit Applicants.

Out-of-state applicants for a concealed firearm permit will be subject to the same application process as in-state applicants.

R722-300-7. Out of State Concealed Firearm Permits.

A. In accordance with Subsection 76-10-523(2)(b) the Division will conduct research annually to determine which states have requirements for the issuance of a concealed firearm permit that meet or exceed the requirements for issuance of a concealed firearm permit in this state.

B. A list of the out of state permits that will be honored in this state will be maintained by the Division. The list will be available to the public upon request.

R722-300-8. Application for a Certificate of Qualification.

A. Application for a certificate of qualification shall be made in writing to the Division on forms provided by the Division and will be subject to the same application requirements as concealed firearm permit applicants set forth in Section R724-4-4. The applicant must also provide proof to the satisfaction of the Division that they are a law enforcement official or judge as defined in Section 53-5-711.

B. A certificate of qualification will act as identification to verify that the holder is exempt from weapons laws in accordance with Section 76-10-523.

R722-300-9. Additional Training Requirements for Obtaining a Certificate of Qualification.

Training requirements for obtaining a certificate of qualification, as set forth in Subsection 53-5-711(2)(b), will be established by the commissioner. A copy of the training requirements will be available in the Division office upon request. The commissioner may make changes or additions to the training requirements as needed. It is the responsibility of the applicant to acquire the training through their agency.

R722-300-10. Annual Requalification Requirement for Obtaining a Certificate of Qualification.

Proof of annual requalification must be submitted to the Division, in writing, no earlier than November 1 and no later than November 30 of each year. If an applicant has received an initial certificate of qualification after August 1, requalification will not be required until the following year. Failure to provide proof of annual requalification by November 30 of each year will result in revocation of the certificate of qualification.

R722-300-11. Duty of Certificate of Qualification Holder to Notify the Division Upon Termination of Status as a Law Enforcement Official or Judge.

A certificate of qualification holder who resigns or is terminated from their position must notify the Division within six months after leaving their position. If the holder obtains other employment as a Law Enforcement Official or Judge within the six month period, the Division will allow the certificate of qualification to remain current provided the holder has not committed an offense that is grounds for revocation under Title 53 Chapter 5 Part 7. If a holder of a certificate of qualification has not obtained another position as a Law Enforcement Official or Judge, the certificate of qualification will be revoked and a concealed firearm permit will be issued provided the holder has not committed an offense that is grounds for revocation under Title 53 Chapter 5 Part 7.

R722-300-12. Denial, Suspension, or Revocation of a Concealed Firearm Permit or Certificate of Qualification.

A concealed firearm permit or certificate of qualification may be denied, suspended or revoked for any of the reasons set forth in Subsections 53-5-704 (3)(a) and (c), or for failure to maintain good character as defined in Subsection 53-5-704(2).

R722-300-13. Requirement to Notify Peace Officer When Stopped.

When a concealed firearm permit holder or certificate of qualification holder is stopped for questioning by a peace officer based on reasonable suspicion in accordance with Section 77-7-15 and the holder has a concealed firearm in his/her possession, the holder shall immediately advise the peace officer that he/she is a lawful holder and has a concealed firearm in his/her possession.

R722-300-14. Concealed Firearm Permit Instructors.

A. The Division will certify concealed firearm permit instructors as provided for in Subsection 53-5-704(8)(b)(ii).

B. Application to become a concealed firearm permit instructor shall be made in writing to the Division on forms provided by the Division. The application shall include:

1. a completed application form;

2. evidence that the applicant has completed a firearms instructor training program sponsored by the National Rifle Association, or Peace Officer Standards and Training, or a program equivalent thereto; and

3. a notarized release of information form.

C. A concealed firearm permit instructor applicant shall pay a non-refundable fee of $5.00. Payment shall be made in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

D. The applicant must submit with the application a copy of a course of instruction that meets the course content requirements established by the Division as required by Subsection 53-5-704(8)(a).

E. The applicant must meet the good character requirements set forth in Subsections 53-5-704(2)(a) through (h).

R722-300-15. Certificate of Qualification Instructors.

A. The Division will certify certificate of qualification instructors as provided for in Subsection 53-5-711(4)(c). An applicant for a certificate of qualification instructor shall:

1. be certified as a firearms instructor by Peace Officer Standards and Training;

2. make a written request to the Division for approval;

3. meet the good character requirements set forth in Subsections 53-5-704(2)(a) through(h); and

4. demonstrate to the satisfaction of the Division that their approval would provide a benefit to the training program.

B. The number of certificate of qualification instructors approved by the Division will be limited to the needs of the program.

R722-300-16. Denial, Suspension, or Revocation of Approval as a Concealed Firearm Permit Instructor or Certificate of Qualification Instructor.

Approval as a concealed firearm permit instructor or certificate of qualification instructor may be denied, suspended or revoked for any of the following reasons:

1. failing to meet the requirements of Sections R724-4-14 or 15;

2. failing to teach from an approved course of instruction;

3. failing to maintain records verifying that an applicant has passed a required course of instruction; or

4. knowingly and wilfully providing false information to the Division.

R722-300-17. Records Access.

A. The purpose of this section is to define access to concealed firearm permit and certificate of qualification records in accordance with Title 63, Chapter 2, and Subsection 53-5-708(1).

B. Except as provided in Subsection 53-5-708(1), information supplied to the Division by an applicant shall be considered "private" in accordance with Subsection 63-2-302(2)(d).

C. Information gathered by the Division and placed in the applicant's file shall be considered "protected" in accordance with Subsections 63-2-304(8)and(9). However, if such information is used as the basis for denial of a concealed firearm permit or certificate of qualification, such information shall be considered "private" in accordance with Subsection 63-2-302(2)(d) and the applicant shall have access to it in accordance with Subsection 53-5-704(16)(c).

R722-300-18. Adjudicative Procedures.

A. Any applicant denied a concealed firearm permit or certificate of qualification may request a hearing before the board by filing an appeal to the Division within 60 days from the date the notice of denial is issued. This appeal process also applies to a concealed firearm permit holder or certificate of qualification holder whose concealed firearm permit or certificate of qualification has been suspended or revoked.

B. Board hearings will be conducted informally in accordance with Section 63-46b-5.

C. Board decisions shall be issued within 30 days from the date of the hearing in accordance with Subsection 53-5-

70416(e) and shall comply with the requirements of Subsection 63-46b-5(1)(i).

D. In accordance with Section 63-46b-11 the board may enter a default order against any party who fails to participate in a hearing.

E. Judicial review of all final actions resulting from informal adjudicative proceedings is available pursuant to Section 63-46b-15.

F. Denial, suspension, or revocation of a temporary permit is not appealable to the board.

G. A concealed firearm permit instructor or certificate of qualification instructor has the same appeal rights as set forth in this section for concealed firearm permit holders and certificate of qualification holders.

KEY: concealed firearm permit
April 16, 1998 53-5-704
Notice of Continuation December 2, 1997 63-46b

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.

R722-310-1. Purpose.

The purpose of this rule is to regulate bail bond recovery and enforcement agents as provided by Title 53, Chapter 11, the "Bail Bond Recovery Act."

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

A. Terms used in this rule are defined in Section 53-11-102.

B. In addition:

1. "Moral turpitude" as used in Subsection 53-11-108(2)(a)(vi), means a conviction of any crime listed in R724-4-3(M). In addition, a crime of moral turpitude means a conviction of an offense involving:

a. the use of alcohol, or;

b. the unlawful use of narcotics or other controlled substances.

2. "Division" means the Law Enforcement and Technical Services Division of the Department of Public Safety.

3. "Peace officer" as used in Subsection 53-11-108(2)(c), means anyone who is employed either full time or part time by the federal, state or local government in one of the officer classifications listed in Subsection 53-13-102.

R722-310-4. Application.

In addition to the requirements set forth in Sections 53-11-109 and 53-11-113, all applicants seeking licensure under this chapter shall provide two completed sets of fingerprint cards for the purpose of fingerprint processing as provided for in Section 53-11-115.

R722-310-5. Licensure.

A. In addition to the provisions set forth in Subsection 53-11-116(1)(b)(i), each license and identification card shall have on it's face a designation as to whether or not the licensee is authorized to carry a loaded and concealed firearm as provided for in Subsection 53-11-108(5).

B. Providers offering instruction or continuing instruction required for licensure shall offer the courses to all applicants at the same course fees.

R722-310-6. Minimum Experience Requirements.

In addition to the requirements set forth in Subsections 53-11-109(1)(b)(i) and (ii), applicants who are claiming previous experience as either a bail recovery agent or law enforcement officer, must be able to substantiate the experience as qualifying experience by showing that the experience claimed has been acquired within ten years immediately preceding application.

R722-310-7. Qualification Credit for Specified Training.

A. Applicants receiving qualification credit under Section 53-11-114, are still required to attend the 16 hour training course(s) referred to in Section 53-11-108.

B. Applicants who hold a criminal justice bachelor's degree or who are certified to have successfully completed the state Peace Officers Standards and Training basic training course referred to in Section 53-6-202, may be exempt from meeting up to 1000 hours of the experience requirements.

C. Not more than 1000 hours may be exempt for any specified training.

R722-310-8. Notice to Commissioner.

The notice to the commissioner referred to in Subsection 53-11-116(5) regarding a change in the name or address of a bail bond agency and any change of employees or contract employees, shall be in writing and signed by the licensee.

R722-310-9. Appeal on Denial of License.

A. All adjudicative proceedings provided for herein shall be informal in accordance with Section 63-46b-5 and as allowed by Section 63-46b-4.

B. The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

C. The board shall review and make an initial determination on all license applications. An applicant who is denied licensure by the board will be given an opportunity to appeal the board's initial determination to the board for a hearing.

D. The board will issue a written decision to the applicant within ten days following the hearing.

E. If the Board denies the license following a hearing, the decision issued by the Board will advise the applicant that he/she may appeal to the commissioner within 30 days after the decision is issued.

F. An appeal to the commissioner will not result in a de novo hearing before the commissioner. It will result in a review of the record by the department's administrative law judge as the commissioner's designee. The administrative law judge, at his discretion, may request oral argument by the parties.

G. In addition to the options in Subsection 53-11-118(4), the administrative law judge may affirm the board's decision.

H. The administrative law judge will issue a decision within 60 days after receipt of the appeal.

KEY: bail bond enforcement agent, bail bond recovery agent, license

November 16, 2000 53-11-103(5)

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-320. Undercover Identification.

R722-320-1. Purpose.

The purpose of this rule is to establish a program whereby the Department of Public Safety can assist federal, state, county, and local law enforcement agencies in concealing the true identity of undercover peace officers.

R722-320-2. Authority.

This rule is authorized by Subsections 53-10-104(1), 53-10-104(9), and 53-10-104(14).

R722-320-3. Definitions.

(1) "Chief administrative officer" means the commissioner of public safety, a chief of police or sheriff of any municipality or county of this state, or the agent in charge of operations in this state for any federal law enforcement agency.

(2) "Peace officer" means anyone employed in one of the four peace officer classifications in Section 53-13-102.

(3) "Undercover identification" means identification issued to a peace officer which allows the true identity of the officer to be concealed from criminal suspects and their associates.

(4) "Undercover investigation" means a criminal investigation conducted by a peace officer which is authorized by the officer's agency and where the true identity of the officer must be concealed from criminal suspects and their associates.

R722-320-4. Type of Assistance Provided.

The department will assist federal, state, county, and local law enforcement agencies in obtaining identification and personal history information for their peace officers who conduct undercover investigations.

R722-320-5. Issuance of Undercover Identification.

(1) The department may issue an undercover identification after receiving a written request from the chief administrative officer of a law enforcement agency. This request must be on official agency letterhead and shall include:

(a) the reason the undercover identification is needed;

(b) the real name and date of birth of the officer needing undercover identification;

(c) the undercover name, date of birth, social security number, and address to be used by the officer; and,

(d) the original signature of the chief administrative officer.

(2) Each request may be for one officer only. Multiple requests in the same letter will not be honored.

(3) Processing a request for undercover identification is time consuming for the department. Therefore, for the convenience of all parties, the officer intending to apply for undercover identification must call the department's Bureau of Criminal Identification (BCI) at (801) 965-4484 and make an appointment prior to coming in to apply for undercover identification.

(4) At the time of issuance the officer must:

(a) present to BCI (4501 South 2700 West, Second Floor, Salt Lake City, Utah) the original letter of request from the chief administrative officer;

(b) provide a copy of valid identification issued by the officer's agency indicating that he/she is a peace officer; and,

(c) complete the application form provided by the department.

(5) The department may issue an undercover identification if the requirements of this rule are met and the department believes that such issuance is in the best interests of law enforcement.

R722-320-6. Expiration of Undercover Identification.

(1) Undercover identification issued pursuant to this rule:

(a) shall automatically expire six months after it is issued;

(b) must be returned to the department by the officer's agency within 30 days in the case of an officer who is reassigned to a position no longer requiring the use of undercover identification; and

(c) must immediately be returned to the department by the officer's agency in the case of an officer who terminates employment with the agency.

(2) No officer may be issued undercover identification if any undercover identification previously issued to another officer of the same agency is not accounted for to the satisfaction of the department.

(3) A chief administrative officer may request that an undercover identification issued to an officer of his/her agency be extended beyond the six month expiration referred to in this section if:

(a) a written request for extension signed by the chief administrative officer is received by the department prior to the expiration date; and

(b) the written request demonstrates to the satisfaction of the department extenuating circumstances justifying the extension.

R722-320-7. Revocation of Undercover Identification.

The department may revoke an undercover identification:

(1) if the undercover identification was used for a purpose not related to an active undercover investigation;

(2) if the officer has been charged with a crime or is under investigation for any wrong doing that would compromise the undercover identification program or not be in the best interests of law enforcement; or

(3) for any violation of this rule.

R722-320-8. Surrender of Undercover Identification.

A peace officer whose undercover identification has expired or which has been revoked shall immediately surrender his/her undercover identification to the department.

R722-320-9. Appeal.

(1) In accordance with Subsection 63-46b-4(1) the department hereby designates all adjudicative proceedings

associated with this rule as informal adjudicative proceedings.

(2) An officer (appellant) whose request for undercover identification has been denied or whose undercover identification has been revoked, may appeal such denial or revocation to the department's administrative law judge (ALJ). The appeal must be filed on a form provided by the department. The appeal shall be considered a request for agency action in accordance with Subsection 63-46b-3(1)(b).

(a) The appeal must be filed within thirty days after the appellant receives notice of the denial or revocation.

(b) The appellant will not receive a hearing on the appeal. The ALJ will review the appeal and issue a written decision on it in compliance with Subsection 63-46b-5(1)(i) within ten days after receiving it.

(3) An appellant who is dissatisfied with the ALJ's decision may file a request for reconsideration with the ALJ within ten days after receipt of the decision. If the ALJ does not issue an order within twenty days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the appellant may seek judicial review in accordance with Section 63-46b-15.

R722-320-10. Records Protected.

All records pertaining to the issuance of an undercover identification shall be protected under Subsection 63-2-304 (9).

KEY: law enforcement, criminal investigation, undercover identification
June 14, 1999 53-10-104
Notice of Continuation July 21, 1998

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-330. Licensing of Private Investigators.

R722-330-1. Purpose.

The purpose of this rule is to define the licensing and regulation standards of private investigators as set forth in Title 53, Chapter 9, the "Private Investigator Regulation Act."

R722-330-2. Authority.

This rule is authorized by Subsection 53-9-103(6).

R722-330-3. Definitions.

A. Terms used in this rule are defined in Section 53-9-102.

B. In addition:

1. "Act constituting dishonesty or fraud" as used in Subsection 53-9-108(1)(a)(iv), means conviction of any crime as itemized in R724-4-3(M).

2. "Act involving illegally using, carrying, or possessing a dangerous weapon" as used in Subsection 53-9-108(1)(a)(ii), means conviction of any firearms violation involving a crime of violence.

3. "Act of personal violence or force on any person or threatening to commit any act of personal violence or force against another person" as used in Subsection 53-9-108(1)(a)(iii), means conviction of any crime in Subsection 76-10-501(2)(b).

4. "Division" means the Division of Law Enforcement and Technical Services of the Department of Public Safety.

5. "Moral turpitude" as used in Subsection 53-9-108(1)(a)(v), means conviction of any crime in R724-4-3(M).

R722-330-4. Application.

A. Applicants must use the application form provided by the division.

B. Applicants will be classified into three categories as set forth in Section 53-9-107: agencies, registrants, and apprentices.

1. If approved for licensure, an agency applicant will receive one private investigation agency license and one identification card.

2. Registrants and apprentices must be employed or contracted by a licensed agency.

C. Applicants must meet the qualifications set forth in Section 53-9-108 and will be required to provide all of the information and fees as set forth in Sections 53-9-109 through 111. Previous work experience must be verifiable for it to apply to the work experience requirement.

R722-330-5. Fees.

A. The information regarding license and registration fees as established by Section 53-9-111, shall apply to this rule.

B. In addition, in accordance with Section 53-9-111, a fee of $24 shall be charged for fingerprint processing and background investigation for each applicant. This fee is non-refundable.

R722-330-6. Issuance and Expiration of Identification Cards.

A. Information regarding the issuance and expiration of identification cards is set forth in Section 53-9-112.

B. In addition:

1. The board shall not issue licenses or registrations, but rather shall review applications and then make recommendations to the commissioner for approval or disapproval.

2. Upon approval by the commissioner, the division shall issue to the applicant an identification card that will expire two years from the issue date.

R722-330-7. Records Access.

A. Information supplied to the division by an applicant, including the completed application form, shall be considered "private" information in accordance with Subsection 63-2-302(2)(d).

B. Information gathered by the division in the course of investigating an application or complaint shall be considered "protected" information in accordance with Subsections 53-9-118(2)(e) and 63-2-304(8). However, if such information is used as the basis for denial of a license or registration or discipline of a licensee or registrant, such information shall be considered "private" information in accordance with Subsection 63-2-302(2)(d) and the applicant shall have access to it.

R722-330-8. Adjudicative Proceedings.

A. The adjudicative proceedings set forth in this section shall be conducted informally as authorized by Section 63-46b-4 and as set forth in Section 63-46b-5.

B. Denials of initial and renewal licenses or registrations are appealable as set forth in Section 53-9-113.

C. The board may take disciplinary action against a licensee or registrant for violation of Subsection 53-9-118(1).

1. Except for summary suspension in emergency cases, disciplinary action will be taken only after the issuance of a notice of intent to discipline and an opportunity for hearing. A letter of caution is not considered to be disciplinary action and is not appealable.

2. The notice of intent to discipline will be issued by the commissioner, and will notify the licensee or registrant of the charge(s) and the right to a hearing before the board within 60 days.

3. Following the hearing, the board may take any of the actions set forth in Subsection 53-9-118(6).

D. Appeals to the Commissioner on denials of initial and renewal licenses or registrations are provided for in Subsection 53-9-113(4). Appeals to the commissioner on disciplinary action are provided for in Subsection 53-9-118(8). Such appeals to the commissioner shall not result in de novo hearings before the commissioner, but rather shall result in a review of the board's findings by the department's administrative law judge, who shall review the board's findings and issue a recommendation to the commissioner for the commissioner's approval and decision. The decision of the commissioner is appealable to the district court in accordance with Subsection 53-9-113(5) and Subsection 53-9-118(9) pursuant to Section 63-46b-15.

KEY: private investigators, license
June 14, 1999 53-9-103(6)
Notice of Continuation November 2, 2000

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-340. Emergency Vehicles.

R722-340-1. Purpose.

This rule explains how vehicles can be designated as "authorized emergency vehicles." Authorized emergency vehicles shall be referred to in this rule as "emergency vehicles."

R722-340-2. Authority.

This rule is authorized by Section 41-6-1.5 and Subsection 53-1-108(1)(c).

R722-340-3. Definitions.

As used in this rule:

(1) "Emergency" or "emergencies" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property and justifies the operator of a vehicle to exercise the driving privileges in Subsection 41-6-14(2).

(2) "Industrial ambulance" means an ambulance that is owned and operated by a private company for the sole benefit of its employees.

R722-340-4. Publicly Owned Emergency Vehicles.

(1) A publicly owned fire department vehicle, or publicly owned police vehicle can be designated as an emergency vehicle if the vehicle:

(a) responds to emergencies;

(b) is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(c) is properly insured; and

(d) is approved as an emergency vehicle by the political subdivision that owns it.

R722-340-5. Privately Owned Emergency Vehicles.

Privately owned vehicles can be designated as emergency vehicles by meeting the requirements set forth in this rule.

R722-340-6. Categories of Privately Owned Emergency Vehicles.

(1) Privately owned emergency vehicles shall be divided into the following categories:

(a) private fire response vehicles;

(b) private police vehicles;

(c) private search and rescue vehicles; and

(d) private ambulance vehicles.

R722-340-7. Private Fire Response Vehicles, Private Police Vehicles, and Private Search and Rescue Vehicles.

(1) A private fire response vehicle, private police vehicle, or private search and rescue vehicle can be designated as an emergency vehicle if:

(a) the vehicle is used on a part time basis to assist a governmental agency in responding to emergencies;

(b) the owner of the vehicle receives written authorization to operate the vehicle as an emergency vehicle from the sheriff, chief of police, or fire chief of the governmental agency that the vehicle is authorized to assist;

(c) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(d) the vehicle is licensed and has a current safety inspection certificate; and

(e) the governmental agency that authorizes the vehicle to operate as an emergency vehicle has adopted written policies regarding the operation of emergency vehicles in their jurisdiction. The policies shall require compliance with the statutory restrictions and requirements of Title 41, Chapter 6.

R722-340-8. Ambulance Vehicles.

(1) A publicly owned or privately owned ambulance vehicle can be designated as an emergency vehicle if the vehicle is licensed by the Utah Department of Health, Bureau of Emergency Medical Services to provide emergency and non-emergency ambulance services under Title 26, Chapter 8.

(2) An industrial ambulance vehicle can be designated as an emergency vehicle if:

(a) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(b) the vehicle is properly insured;

(c) the vehicle is licensed and has a current safety inspection certificate; and

(d) the company that owns the vehicle receives written authorization to operate the vehicle as an emergency vehicle from:

(i) the sheriff of the county in which the company is located; and

(ii) the chief of police of the city, if any, in which the company is located.

KEY: emergency vehicle
September 11, 1997 41-6-1.5
Notice of Continuation December 2, 1997 53-1-108(1)(c)

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-900. Review and Challenge of Criminal Record.

R722-900-1. Purpose.

Subsection 53-10-108(8)(a) requires the Commissioner of Public Safety to establish procedures to allow an individual to review his criminal history record information. Subsection 53-10-108(8)(c) requires the Commissioner to establish procedures to allow an individual to challenge the completeness and accuracy of his criminal history record information as contained in the department's computerized criminal history files. The purpose of this rule is to establish those procedures.

R722-900-2. Authority.

This rule is authorized by Sections 53-10-108 and 63-46a-3.

R722-900-3. Review.

An individual may review the department's criminal history record information about him, by contacting the Bureau of Criminal Identification (BCI) and:

(a) filling out an application provided by BCI;

(b) providing a set of fingerprints;

(c) providing a copy of a government issued photo i.d.; and

(d) filling out and signing a criminal history waiver form provided by BCI; and

(e) paying a $10 processing fee.

R722-900-4. Application by Mail.

(a) Individuals who are unable to apply in person may obtain an application from BCI, be fingerprinted at a local law enforcement agency, and then mail the completed application, fingerprints, signed waiver, and $10 processing fee to BCI at Box 14280, Salt Lake City, Utah 84114-8280.

(b) The local law enforcement agency verifies the identity of the individual by checking a government issued photo i.d. at the time of fingerprinting and signs the application form.

R722-900-5. Challenge.

(a) An individual may challenge the completeness and accuracy of his criminal history record information by filling out a challenge form provided by BCI. The submittal of a challenge form will be handled as an informal adjudicative proceeding in accordance with Section 63-46(b)-5. If the department denies the challenge, no further hearing, review, or reconsideration shall be granted. The individual making the challenge will be required to prove to the satisfaction of BCI through the use of appropriate documentation that the department's criminal history record information is incomplete or inaccurate.

(b) If BCI is satisfied that the individual has sufficiently documented that his criminal history record information is incomplete or inaccurate, BCI will amend the individual's files accordingly.

(c) An individual who is dissatisfied with the decision made by BCI regarding the completeness or accuracy of the department's criminal history record information on him, may appeal the decision to district court in accordance with Section 63-46b-15.

KEY: criminal records
December 15, 1998 53-10-108(8)
Notice of Continuation December 16, 1998

R926. Transportation, Program Development.

R926-6. Transportation Corridor Preservation Revolving Loan Fund.

R926-6-1. Purpose and Authority.

(1) Subsection 72-2-117.7(c) authorizes the Utah Transportation Commission to establish this rule. The purpose of this rule is to establish procedures for:

(a) the Utah Department of Transportation to apply for fund monies;

(b) the Utah Transportation Commission to award fund monies; and

(c) repayment conditions; and

(d) establishing an advisory council to assist in the corridor preservation efforts.

R926-6-2. Definitions.

(1) "Commission" means the Utah Transportation Commission.

(2) "UDOT" means the Utah Department of Transportation.

(3) "Council" means the Utah Transportation Corridor Preservation Advisory Committee Council.

(4) "Corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.

(5) "Fund" means the Transportation Corridor Preservation Revolving Loan Fund.

R926-6-3. Utah Transportation Preservation Advisory Council.

(1) UDOT shall establish a council committeeto provide recommendations and priorities concerning the use of fund monies to the commission. assist in prioritizing requests for funding. The council committee shall be chaired by the UDOT Engineer for Transportation Planning. Additional committee members shall be chief, UDOT Right of Way Division, Two commission members selected by the Chairman of the commission and any additional members appointed by the commission.and a representative with relevant technical expertise or experience from each of the following:

(a) Bear River Association of Governments;

(b) Five County Association of Governments;

(c) Mountainland Association of Governments;

(d) Six-County Association of Governments;

(e) Southeastern Association of Governments;

(f) Uintah Basin Association of Governments; and

(g) Wasatch Front Regional Council.

R926-6-4. Council Responsibilities.

The council shall receive and review all requests for monies from the fund; and shall prioritize such requests based upon Subsections 72-2-117.7(a) and (b). Priority shall be given to cost-effective preservation projects which maximize cost savings for future transportation right of way acquisitions.

R926-6-5. UDOT Responsibilities.

(1) In addition to the specified statutory considerations, UDOT may also:

(a) review requests and determine if sufficient studies have been completed in a corridor to:

(i) identify environmentally sensitive areas;

(ii) determine feasible alignments; and

(iii) allow for adequate public involvement.

(b) forward council recommendations to the commission and request commission approval for funding specific corridors;

(c) acquire real property or any interest in real property necessary for corridor preservation in corridors authorized by the commission;

(d) manage monies of the fund; and

(e) administer repayment contracts with counties and municipalities.

R926-6-6. Procedure for the Awarding of Fund Monies.

Requests for monies shall be directed to the council for review and prioritization based upon Section R926-6-4. The results of the evaluation of requests shall be forwarded to the Commission. The Commission shall review the recommendations of the Council as well as any other pennant factors and approve, adjust, or reject the recommended expenditures in accordance with Section 27-2-117(4a).

R926-6-7. Repayment Conditions.

The commission may determine a loan repayment schedule. All corridor preservation loans shall be paid back according to the approved loan repayment schedule or the earlier of: when the remainder of the right of way has been acquired; or when the project has been advertised for construction. If the commission determines an alignment for a transportation project is not feasible and property for the alignment was purchased under this program, the property shall be disposed of in accordance with Section 72-5-111. All loan repayments together with rents, lease proceeds, profits, and monies resulting from the sale of excess properties shall be returned to the fund.

KEY: transportation, transportation corridor preservation revolving loan fund, transportation planning, right of way

January 3, 2001 72-2-117.7(c)

R930. Transportation, Preconstruction.

R930-6. Rules for the Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way.

R930-6-1. Policy.

(1) The policy of the Utah Department of Transportation (UDOT) is to accommodate utility facilities installations on federal aid and non-federal aid highway rights-of-way, to the extent that these facilities may be accommodated without compromising the safety or integrity of the highway and without interference with the normal operation and maintenance activities as required for state highways in accordance with Title 72, Chapter 1.

(2) The Utah Department of Transportation shall allow utilities to place utility facilities on highway rights-of-way which receive federal funds subject to their compliance with the 23 Code of Federal Regulations, Part 645, Subpart B, "Accommodation of Utilities".

R930-6-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority: Section 72-3-109; Section 72-6-116; Section 72-6-117; Section 72-7-102; and Section 72-7-503.

R930-6-3. Purpose.

Control of State Highway right-of-way is necessary to provide for the safe and efficient operation of highways and to utilize the full potential of the highway investment. Owners of property fronting on a highway have certain rights of access unless such access has been restricted by purchase or by legal action. Utility facilities shall be accommodated for public service. Road users should also be able to expect reasonably safe highways for travel. These rules are necessary to provide efficient use of the right-of-way to satisfy all of these needs.

These rules and procedures are promulgated to achieve traffic safety and to provide reasonable convenience to the traveling public and adjoining property owners, and to provide guidelines for accommodation of utilities facilities within or across the highway rights-of-way and access management.

R930-6-4. Incorporations by Reference.

The following federal law, Federal agency manuals, national organizations and associations standards, and UDOT illustrations standard specifications technical manuals with tables, and technical requirements are adopted and incorporated by reference:

(1) 23 CFR, Part 645, Subpart B, Accommodation of Utilities, May 2000 edition.

(2) Federal Pipeline Safety Act, 49 USCA Section 60101 et seq., July 1994 Edition.

(3) Transportation of Natural Gas and Other Gas by Pipeline, 49 CFR, Part 192, Edition March 20, 1995.

(4) AASHTO's Roadside Design Guide, edition of 1996.

(5) AASHTO's, "A Policy On the Accommodation of Utilities within Freeway Right-of-Way", February, 1989 edition.

(6) AASHTO's, "Policy on Geometric Design of Highways and Streets", 1994 edition.

(7) AASHTO's "Standard Specifications for Highway Materials and Methods of Sampling and Testing Part II", 1993 edition, AASHTO Designation T-99.

(8) American National Standards Institute (ANSI) B31.3 1993 edition.

(9) American Petroleum Institute (API) 1104 for Piping, 18th edition 1994.

(10) American Society of Testing and Materials (ASTM), A53-93a, and A134, A135 and A139, 1993 edition.

(11) American Water Works Association (AWWA), specifications C200-86, 1987 edition.

(12) Manual on Uniform Traffic Control Devices, MUTCD, Federal Highway Administration.

(13) National Electrical Safety Code, C-2 Section 232, 1993 edition.

(14) UDOT Standard Plans.

(15) Standard Specification for Road and Bridge Construction, 1994 edition.

R930-6-5. Definitions.

(1) AASHTO - American Association of State Highway and Transportation Officials.

(2) ANSI - National Standards Institute.

(3) API - American Petroleum Institute.

(4) Arterial Highway - A general term denoting a highway primarily for through traffic, usually on a continuous route.

(5) ASTM - American Society of Testing and Materials.

(6) Average Daily Traffic (ADT) - The estimated average 24-hour volume, being the estimated total annual volume during a stated period divided by 365 estimated days annually.

(7) Backfill - Replacement of soil around and over a pipe or utility line.

(8) Bury - Depth of top of pipe or utility line below grade of roadway or natural ground or the bottom of a stream channel.

(9) Cap - Rigid structural element surmounting a pipe or utility line.

(10) Carrier - Pipe directly enclosing a transmitted fluid (liquid or gas).

(11) Casing - A larger pipe enclosing a carrier.

(12) Clear Roadside Policy - The policy employed by UDOT to increase safety, improve traffic operations and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground, within the clear zone as defined in AASHTO's "Roadside Design Guide".

(13) Company - The utility company either publicly, privately or municipally owned who is making application to occupy highway right-of-way.

(14) Conduit or Duct - An enclosed casing for protecting wires or cables.

(15) Control of Access - The condition where the right of owners of abutting land or any other persons having access to highway right-of-way is controlled by the appropriate

public authority.

(16) Contiguous Property - A parcel of land which has two or more frontages abutting highway rights-of-way.

(17) Drain - A facility to accommodate the discharge of fluids from a conduit, culvert or casing.

(18) Driveway - A driveway is an access constructed within the public way, connecting the public roadway with the adjacent property.

(19) Encasement - Structural element surrounding a pipe.

(20) Encroachment - Unauthorized use of highway right-of-way.

(21) Encroachment Permit - Document which specifies the requirements and conditions under which work on the highway right-of-way may be performed.

(22) Expressway - A divided arterial highway for through traffic with full or partial control of access.

(23) Freeway - An expressway with full control of access.

(24) Easement - An interest in real property that conveys use, but not ownership, of a portion of an owner's property.

(25) Frontage Road - A local street or road auxiliary to and located on the side of an arterial highway for service to abutting and adjacent properties.

(26) Galleries - An underpass for two or more underground utilities.

(27) Highway Prism - The portion of a highway within the construction limits of roadway between the top of cut or toe of fills.

(28) Highway, Street or Road - A general term denoting a public area way for purposes of vehicular travel, including the entire area within the right-of-way.

(29) Industrial and Commercial - Areas designated as industrial and commercial under local government zoning ordinances.

(30) Intersection - The general area where two or more highways join or cross at-grade.

(31) Limited (Partial) Control of Access - preference is given to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

(32) Manhole - An access opening in an underground system which workers or others may enter for the purpose of making installations, repairs or maintenance.

(33) Median - The portion of a divided highway separating the traveled ways for traffic in opposite directions.

(34) MUTCD - Manual on Uniform Traffic Control Devices.

(35) Normal and Routine Maintenance Activities - Normal maintenance operations are those not requiring excavations in excess of the minimum horizontal clearance and depth of bury.

(36) Pavement Structure - The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load.

(37) Permit - See Encroachment Permit.

(38) Person - "Person" means any individual, partnership, corporation, association, government entity, or public or private organization or any character other than an agency, as noted in Subsection 63-46a-2(10).

(39) Pressure - Relative internal pressure in pascal (PA).

(40) Public Authority - A public administrative agency or corporation authorized to administer a public enterprise.

(41) Rest Area - A roadside area with parking and other facilities, separated from the roadway, provided for motorists to stop and rest.

(42) Roadside - A general term denoting the area adjoining the outer edge of the roadway.

(43) Roadway - The portion of a highway, including shoulders, for vehicular use.

(44) Rural - Areas incorporated, or census designated of under 2,500 population.

(45) Shoulder - The paved or unpaved portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles.

(46) Structure - Any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. A major structure is a highway structure with a span or multiple span length of 20 feet or more measured along the center line of the roadway and a minor structure is the same as a major structure except it is less than 20 feet.

(47) Subbase - A layer or layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

(48) Traveled Way - The portion of the roadway for the movement of vehicles exclusive of shoulders and auxiliary lanes.

(49) Trenched - Installed in a narrow open excavation.

(50) UDOT - The Utah Department of Transportation.

(51) Untrenched - Installed without breaking ground or pavement surface such as boring, jacking or augering.

(52) Urban - A census designated area with a population of 2,500 or more or any portion of a designated Metropolitan Planning Organization planning boundary.

(53) Utility - Privately, publicly, cooperatively or municipally owned pipe lines, 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 or indirectly service the public or any part thereof.

(54) Utility Facility - Pipe lines, installations or systems for 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.

(55) Utility Line Agreement - Document by which UDOT approves the use and occupancy of highway rights-of-way by utility facilities or private lines.

(56) Vent - Appurtenance to discharge gaseous accumulations from casings.

(57) View Area - A roadside area provided for motorists to stop and view the scenery in safety.

R930-6-6. Right-of-Way Use: Conditions and

Requirements.

(1) General Conditions. The following provisions are applicable to all commercial and industrial establishments, service areas, utility companies, private residences, farms, or any other property.

(a) Transferability. No permitted interest or right-of-way shall be transferred to another utility or person except by written consent of UDOT.

(b) Recognition of existing interests. UDOT recognizes that pre-existing property interests within UDOT rights-of-way exist. Proof of a pre-existing property interest within a public right-of-way shall be accepted in the form of either a duly executed deed, grant or other document establishing the same, or at least two affidavits sufficient to establish prior right or title of the utility or person.

In the absence of such proof, it shall be assumed that the utility or person occupies the right-of-way as a permittee [(i.e. by permission), and enjoys no vested interest.

In those instances when UDOT requires a utility or person with a pre-existing property interest to move completely or partially off the right-of-way, UDOT shall make appropriate remuneration for the relinquishment of that interest.

(c) Indemnification. Applicants to whom permits may be granted 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, operation, or use of any pole line, surface or subsurface line or other facility. The permit holder shall be responsible for the maintenance of the excavation for a period of three years in accordance with applicable specifications for excavations across State Highway rights-of-way.

The adoption of these rules by UDOT does not constitute an acceptance or recognition of pre-existing property interests. UDOT assumes no liability associated with these interests and uses, either for the safety to users or the traveling public, damage to property, or for the continued use thereof.

(d) Notice of damage. Notification of damage to any underground utility facility by UDOT or by another utility shall be made to the affected utility as specified in Title 54, Chapter 8a and Section 72-7-102.

(e) Installation of New Utilities, and Upgrading or Relocating of Existing Utilities.

(i) UDOT acquires rights-of-way which are adequate not only for the construction of the highway facility, but also for its safe operation and maintenance. The rights-of-way shall be devoted exclusively to public highway purposes, except that certain nonhighway uses of rights-of-way may be allowed which are in the public interest provided such uses do not impair or interfere with the free and safe flow of traffic and highway maintenance.

(ii) UDOT recognizes that it is in the public interest for utilities to jointly use the right-of-way of public roads and streets when such use does not interfere with the primary purpose of the highway. The opportunity for joint use avoids the additional cost of acquiring separate right-of-way for the exclusive accommodation of utilities.

(iii) UDOT may require the relocation of utilities located on any highway right-of-way when highway changes are required to provide for the free and safe flow of traffic.

(iv) Utility facilities owned by political subdivisions may occupy state highway rights-of-way to provide services to abutting residents, but utilities may not interfere with the free and safe flow of the traffic. When highway improvements require the relocation of facilities, they shall be moved at the owner's sole expense unless UDOT has agreed to pay or share in the cost of relocation as is required under Section 72-6-116.

(v) Utility facilities owned by political subdivisions may be placed in highway rights-of-way that do not directly serve abutting owners. However, the relocation costs may not be funded with highway funds, and shall be totally paid for by the owner unless UDOT has agreed to pay or share in the cost of relocation as is required under Section 72-6-116.

(vi) Reimbursement to a utility for expenses incurred in relocating it's facility shall be waived as a condition of obtaining a permit when requests are made to install new facilities within the highway right-of-way under any of the following circumstances:

(A) When the installation of such facilities is to be by attachment to a highway structure. See Section R930-6-10.

(B) When the installation is to be longitudinally along the highway under the highway prism or under a cut ditch adjacent to such highway and it does not meet the 60"-inch depth requirement. See Section IV. H.

(C) When the installation is within a highway right-of-way in an area that is designated for construction by UDOT on its five or ten year highway improvement planning documents.

(vii) These rules shall apply only to state highways as defined in Section 72-3-102.

(f) Severability. If any part or parts of these rules shall be held to be unlawful, such unlawfulness may not affect the validity of the remaining parts of these rules. Nothing in these rules shall be construed to disqualify UDOT from receiving Federal participation on any Federal-aid Highway Project.

(g) Depth of Bury. Depth of bury shall be at least 0.91m (3 feet). When facilities are installed within 6.10m (20 feet) from the edge of pavement, the depth requirement is 1.52m (5 feet) in order to clear signs of delineators installed by UDOT.

R930-6-7. Utility Line Agreements, Permits and Utility Installation Requirements.

(1) Utility line agreements. Any utility company or political subdivision desiring to use a right-of-way for the construction, maintenance, repair, operation, or use of any pole line, surface or subsurface line or other facility shall be licensed to do so by entering into a utility line agreement with UDOT.

A licensing agreement may not be required for service connections after a main line has been installed.

(2) Permits - Reasonableness and Requirements of Issuance.

(a) Permits issued shall contain reasonable terms and conditions pertaining to crossing, digging-up, or the

placement, construction, and maintenance of approach roads, driveways, structures, poles, pipelines, conduits, sewers, ditches, culverts, facilities, or any other structures or objects on rights-of-way.

(b) No utility or person shall work in or from, dig up, disturb, or alter the land surface or the roadway surface within the right-of-way of any State Highway under any utility line agreement until a permit, in writing, has first been obtained from UDOT except in emergency situations as provided in Section V.C.9 of this manual.

The UDOT Region Director or his authorized representative shall issue permits for locating or relocating of any utility facility on rights-of-way. Permit applicants shall comply with all applicable environmental laws before the UDOT Region/District Director or his authorized representative shall issue a permit to proceed with any work.

(c) Permit Process - See Appendix D for flow chart.

(i) Submit two (2) sets of plans with application. The plans shall show the right of way, all existing utilities, depth of proposed line, location of new facility in relation to center line of road, and location of manholes.

(ii) Plans are reviewed by UDOT staff taking into consideration any future projects. If plans are approved, the permit officer will stamp them approved and give the utility company a copy and will retain an approved copy to give to the inspector.

(iii) The utility contractor will come in and obtain the permit in the name of the utility company. The contractor will notify UDOT's inspector prior to beginning any work.

(iv) If an inspector is not needed on the job, the contractor will notify UDOT when work is completed.

(d) For each permit issued, UDOT shall recover the cost for:

(i) Planning coordination;

(ii) Administration support cost;

(iii)Review of plans by UDOT staff;

(iv) Field review by UDOT staff;

(v) Inspection cost.

(3) Utility Facility Installation Requirements.

(a) Surety Bonds. Unless otherwise provided by prior written agreement, pursuant to Section 72-7-102, the following bonding requirements are to be met by each utility or person applying for a permit.

(i) A minimum performance bond of $10,000 for each project shall be required for all excavation permits except from counties and municipalities, except that the UDOT Region Director shall have power to require a bond of any county or municipality that fails to live up to the terms and conditions of any previous permit issued. Larger bonds may be required at the option of the UDOT Region Director for extensive work. Bonds shall run for a term of three (3) years after completion of the work to guarantee satisfactory performance. The UDOT may proceed against the bond to recover all expenses incurred by UDOT, its employees or representatives, in bringing the section of roadway interfered with to required standards.

(ii) A payment bond to ensure payment of costs incurred by UDOT for planning coordination, administration and support, plan review, field review, and inspection costs. UDOT may proceed against the bond to recover all expenses incurred by UDOT.

(b) Location.

(i) Utility facilities shall be located in such a manner so as to:

(A) eliminate or at least minimize need for later adjustment to accommodate future highway improvements, and

(B) permit access for servicing with minimum interference to highway traffic.

(ii) Longitudinal utility facility installations shall be located on uniform alignment within 0.91m (3 feet) to the right-of-way line so as to provide a safe environment for traffic operation and preserve space for future highway improvements or other utility installations.

(iii) New transverse utility facility installations permitted under highways shall be placed by boring. Open excavation shall be allowed only when prior knowledge of ground conditions or demonstrated attempts to bore prove impossible.

(iv) To the extent feasible and practicable, utility facility highway crossings shall be on a line generally 90 degrees to the highway alignment.

(v) The horizontal and vertical location of utility facilities within the highway right-of-way limits shall conform with the clear zone policies as defined in the AASHTO "Roadside Design Guide", current edition. Above ground utility facilities are roadside obstacles and their location shall be consistent with the clearances applicable to all roadside obstacles for the type of highway involved. Any above-ground utilities installed behind barrier curb and gutter shall be placed a minimum of 460 mm (18 inches) behind the front face of the curb when no sidewalk exists or preferably 460 mm (18 inches) behind the sidewalk when both barrier curb and gutter and sidewalk exist when right-of-way is available. Installation shall meet vertical clearance of electrical power lines as defined in V.2.b. "Power and Communication Lines." When a new utility pole is approved to be installed in the sidewalk area, the pole shall be installed to allow ADA requirements for sidewalk clearance past the pole.

(vi) It is the utility company's responsibility to maintain a set of certified reproducible plans and an electronic file showing the location of utility facilities. The utility company shall use GPS to survey their facilities in order to establish its location and maintain an accurate file to be used by UDOT. These plans shall include appropriate vertical and horizontal ties to the highway control point in order that the exact location of the facility may be established as the need may arise.

If the utility company does not have the utility location plans and files available to give to UDOT when requested, then it is the responsibility of the utility company to obtain the actual location of their facilities at their own expense. If the utility fails to provide the information requested by UDOT within the schedule established by UDOT, UDOT will hire a Subsurface Utility Engineering consultant out of the pool and bill the utility company for the cost of locating their facilities.

(c) Design.

(i) Utilities shall be required to design distribution or service line crossings of freeways, spaced as needed to serve consumers in a general area along either or both sides so as to minimize the need for crossings by utility service connections. In areas where utility services are not available within a reasonable distance along the side of freeways, crossings of freeways by utility service connections may be permitted.

(ii) All utility installations on, over, or under the rights-of-way of UDOT and utility attachments to highway structures shall as a minimum meet the following requirements:

(A) Electric power and communication facilities shall conform with the most current edition of the National Electrical Safety Code.

(B) Waterlines shall conform with the American Water Works Association (AWWA), specifications C200-86, most current edition, and any local restrictions by political subdivisions.

Pressure pipelines shall conform with the current American National Standards Institute (ANSI) B31.3 edition; American Petroleum Institute (API) 1104 for Piping, 18th most current edition including addenda B31.3a 1993, B31.3b 1994, and B31.3c 1995; American Society of Testing and Materials (ASTM), A53-93a and A134, A135 and A139, most current edition.

(C) Liquid petroleum pipelines shall conform with the ANSI and API specifications.

(D) Unpressurized sanitary sewer system shall conform to the ASTM specifications.

(E) Federal Pipeline Safety Act, 49 USCA Section 60101 et. seq., most current edition and Transportation of Natural Gas and Other Gas by Pipeline 49 CFR Part 192, most current edition.

(iii) Pipelines located in casings, galleries or utility tunnels shall be designed to withstand expected internal pressure and to resist internal and external corrosion. Uncased pipelines shall be designed to withstand stresses due to external loading.

(iv) Joints for carrier line pipes operating under pressure shall be of leak-proof type of construction.

(v) Ground-mounted utility facilities shall be of a design compatible with the scenic quality of the specific highway section being traversed.

(vi) All utility facilities on, over, or under on highway rights-of-way and attachments to highway structures shall be of durable materials designed for long service life expectancy reasonably free from servicing and maintenance.

(vii) On new installations or adjustments of existing utility facilities, provision shall be made for known or planned expansion of the facilities. They shall be planned so as to avoid interference when additional overhead or underground lines are installed at some future date.

(viii) The utility shall be responsible for the design of the facility to be installed within the highway rights-of-way or attached to a highway structure. UDOT shall be responsible for review and acceptance of the company's proposal particularly the manner in which the utility facility is to be installed including the measures to preserve the safe and free flow of traffic, structural integrity of the roadway or highway structure, and ease of highway maintenance and appearance of the highway.

(g) Appurtenances.

(i) Where pipeline carriers of hazardous transmittants are to be encased, each location shall be individually analyzed to determine the need for venting. Where vents are required, they shall be located at the high end of casings less than 46 m (150 feet) in length. Where casings are more than 46 m (150 feet) in length and vents are to be installed, they shall be placed at both ends of the casing. Vent stand pipes shall be located so as to conform with the Department's clear roadside policy and so as not to interfere with highway maintenance operations nor to be concealed by vegetation. Vent stand pipes shall preferably be located at fences or right-of-way lines.

(ii) Where drains are required for tunnels, casings, or galleries enclosing carriers of liquid, liquefied gas, or heavy gas, the drains may outfall into roadside ditches or natural drainage courses approved by UDOT. When such hazardous materials are discharged into UDOT's roadside ditches or natural drainage courses, the owner of the carrier shall remove the material from UDOT's right-of-way and restore the site to its original condition at their own expense. These outfalls may not be used as a wasteway for purging the carrier unless prior written approval is obtained from the UDOT Region/District Director or his authorized representative after clearance with the Office of Loss Control.

(iii) Utilities shall be required to install readily identifiable and suitable markers at the right-of-way line where it is crossed by pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable. Vents shall be allowed to serve as markers where possible. Markers are desirable and are encouraged by UDOT for all other pipelines.

(iv) Location of manholes in the pavement or shoulders of major highways, including urban highways, shall be avoided. Exceptions may be made on streets at those locations where manholes are necessary to access existing utility facilities. Insofar as practicable, every effort shall be made to minimize these installations and to avoid their location at street intersections.

Manholes shall be designed and located in such a manner that shall cause the least interference to other utilities and future highway expansion. Adjustment of manholes to fit new or reconstructed highway paving, grading or slope flattening shall be made by the utility at its own expense. To restore the highway pavement riding surface around the manhole, the utility shall pour a concrete collar around the manhole ring and cover to a width and depth approved by the UDOT Region/District Office.

(v) Shut off valves shall be installed in lines at or near ends of structures and near areas where there may be unusual hazards unless hazardous segments can be isolated by other sectionalizing devices within a reasonable distance.

(h) Inspection.

UDOT shall routinely inspect the work of the utility or their contractor to assure compliance with the agreement and to insure proper compliance with State and Federal rules and regulations. These construction inspections shall be made by

the UDOT Region Director or an authorized representative. All costs of construction inspection shall be paid by the company and may be paid in advance. If the inspection costs exceed the original amount deposited by the utility, the utility shall reimburse the additional funds to UDOT within thirty (30) days of billing. Failure to do so shall be cause to revoke the permit, review the utility license and remove the utility from the right-of-way. UDOT shall refund any inspection fee surplus when the inspection costs underrun.

(i) Date of Completion.

The work covered by the agreement shall be completed within a specified number of days. Failure to complete the work within the specified time shall give UDOT the option of extending the time or revoking the permit and using the bond to pay for completion of the work. Any time extension shall be in writing and approved by UDOT.

(j) Costs.

On new installations, the entire costs of the utility facility shall be paid for by the utility. In the event a highway is reconstructed requiring adjustment of manholes or relocation of the utility on the right-of-way, reimbursement for the relocation shall occur pursuant to Section 72-6-116.

(k) Beginning Construction.

All excavations and/or other operations on UDOT property or right-of-way may not be commenced by the utility until and after forty-eight hours (48 hrs) notice is given by the utility to the UDOT Region Director or his authorized representative and a permit obtained. Construction shall be carried forward to completion in the manner required by the UDOT Region/District Director or his authorized representative.

(l) Excavation and Backfill.

All excavation and backfill shall be made in compliance with "the Specifications for Excavation on State Highway Right-of-way" (see Appendix B). No excavation shall be made without first obtaining and posting the required permit. The permittee shall also be cleared on a variety of environmental laws, as outlined in letter dated October 9, 1997 issued by UDOT's Deputy Director (Appendix E) before the permit is issued. An emergency excavation may be made without prior permit if there is imminent danger or loss of life or severe damage to property. In such emergency situations, the excavating parties shall contact UDOT not later than the end of the first working day following the excavation. None of the provisions of these rules are waived for emergency situations except for the prior permit requirement. In all cases the permittee shall comply with the State Law requiring notification of all utility owners prior to excavation.

(m) Traffic Control.

The permittee shall conduct their operation so there shall be a minimum of interference to highway traffic. The utility shall provide a traffic control plan in conformance with the current Federal Highway Administration "Manual on Uniform Traffic Control Devices", "MUTCD", during all operations of the utility, in constructing said line. No lane closure shall be made without prior approval of the UDOT Region Director or his authorized representative. Traffic control plans showing detours and signing operations shall be required in advance for review and approval for all lane closures. Peak hour lane closures may be prohibited.

(n) Restoration of Existing Pavement.

(i) The permittee shall at their own expense replace any pavement removed or damaged with pavement of a type and depth approved by the UDOT Region Director or his authorized representative, including gravel base material. The restoration shall be accomplished within 48 hours after completion of excavation and backfill, unless additional time is granted in writing by the UDOT Region Director or his authorized representative.

(ii) New or replaced pavement shall be constructed in conformity with the "Specifications for Excavation on State Highway Right-of-way" (see Appendix B), and shall be subject to the inspection and approval of the UDOT Region Director or his authorized representative. If weather conditions do not permit immediate placing of permanent pavement, a temporary pavement shall be placed. As soon as weather shall permit, the temporary pavement shall be removed and replaced with a permanent pavement. If the gravel surface, gravel shoulders or gravel surfaced approach roads becomes contaminated and is not consistent with UDOT specifications, gravel surfacing material shall be entirely removed and replaced with new gravel surfacing material. The repairs to pavement or surface shall include pavements which are damaged with construction equipment or construction operations. UDOT shall have the option of restoring the roadbed at the expense of the permittee.

(o) Restoration of Traffic Signal Equipment.

Any traffic signal equipment or facilities which are disturbed or relocated as a result of the utility work shall be restored in accordance with plans approved by UDOT. Restoration of traffic signal equipment shall be done at the permittee's expense by a UDOT approved electrical contractor experienced in signal installation, retained by the permittee and approved in advance by UDOT. Work shall be scheduled to ensure that disruption of any traffic signal operation is kept to a minimum.

(p) Cleaning Up Highway Right-of-way.

(i) Upon completion of the work, all material shall be removed from within the limits of the highway, including mud tracks on paved roads. The disturbed surface shall be carefully graded to the lines and grades established. Seeding shall be required to restore vegetation damaged or destroyed.

(ii) Any highway features or facilities such as paint stripes, signs, culverts, etc., disturbed or damaged during the progress of the work shall be properly restored to satisfy current standards and rules.

(q) Maintenance.

The utility facility shall at all times be maintained, repaired, renewed and operated by and at the expense of the utility. The utility shall be serviced without access from any interstate highway or ramp. UDOT reserves the right, without relieving the utility of their obligation, to reconstruct or make emergency repairs to the utility as it may consider necessary. UDOT will give a utility company reasonable time to maintain their facility, but if UDOT is required to make the repairs, the utility shall reimburse UDOT its cost.

(r) Future Highway Construction.

As a condition of permitting a new utility facility in a

state right-of-way, UDOT will retain the right to cross such facility at any point within UDOT's right-of-way, necessary for future construction, expansion or improvement of it's highway system provided that UDOT uses due care in protecting the utility facility.

(s) Liability.

Unless otherwise provided by prior written agreement, the utility or permittee is required to post a performance bond, running for a term of three years after completion of the work, to guarantee satisfactory performance as provided in the agreement, license, or permit. UDOT may proceed against said bond to recover all expenses incurred by UDOT, their employees or representatives in the sections of roadway interfered with by the permittee to restore to UDOT standards. These expenses refer to all expenses incurred in the repairing of portions of the roadway determined by UDOT inspectors to be inadequately restored or maintained by the utility. The liability of the utility or permittee shall not be limited to the amount of the bond. The utility or permittee shall protect and indemnify and save harmless UDOT for any and all claims including claims from third parties for damage and/or injuries caused by construction or use of the utility facility, and from all costs and expenses, including attorney's fees.

(t) Cancellation of License and/or Permit.

If the utility shall fail to construct, repair or remove said utility in accordance with the terms of the agreement to the entire satisfaction of UDOT, or shall fail to pay UDOT any sum of money for the inspection, reconstruction, repair or maintenance of said utility, UDOT retains the right to cancel the permit and remove said utility and restore the highway at the sole expense of the utility. Before UDOT cancels the agreement, it may notify the utility in writing, setting forth violations and shall give the utility a reasonable time to fully correct the same.

(u) UDOT Maintenance Operations.

Underground facilities must be buried to the proper depth to avoid conflict with UDOT's normal and routine maintenance activities. In entering into a utility line agreement with the UDOT and obtaining an encroachment permit for the work, the utility will be required to avoid conflicts by placing its facilities to the required horizontal clearance and minimum depth of bury. The utility owner by the terms of the permit will be required to protect, indemnify and hold harmless the UDOT for damages to lines not in conformance with the horizontal or vertical clearances. Any noncompliance to the above may result in annulment of the utility company's agreement or permit.

R930-6-8. Pipelines.

(1) Location.

(a) To the extent feasible and practicable, UDOT shall require pipeline crossings normal to the highway alignment thereby minimizing interference with traffic during construction and conflict with other highway facilities.

(b) Conditions which are generally unsuitable or undesirable for pipeline crossings shall be avoided. These include locations in deep cuts, across cuts and fills, on steep slopes, locations near footings of bridges and retaining walls and across intersections at grade or ramp terminals. Also, locations shall be avoided at cross drains where flow of water, drift or stream bedload may be obstructed and in wet or rocky terrain where it shall be expensive to provide minimum bury.

(c) All locations shall be subject to a plan or field review by the UDOT's Region Director or an authorized representative to insure that the proposed pipeline installation may not interfere with existing or planned highway facilities or with highway operation and maintenance processes. Installation of privately owned pipelines for the purpose of draining wetlands will not be allowed on highway rights-of-way.

(2) Depth of Bury.

(a) The critical control for bury on a pipeline crossing shall be the low point in the highway cross-section. In establishing the depth of bury below an unpaved ditch, allowances shall be made for potential increase in ditch depth resulting from scour, ditch maintenance operations or from the need to increase the capacity of the ditch. On longitudinal installations, bury shall be controlled by the depths of lateral drainage facilities, buried cable, bridge structures, and likely highway maintenance operations.

(b) In cold climates the depth of frost penetration shall be taken into consideration in determining the depth of bury. The use and occupancy permits and utility line agreements shall require the utility company to keep accurate records as to location and depth of bury and provide the information to UDOT as per V.C.2.f. Controls for the bury of pipelines shall be as follows:

(i) Within the highway right-of-way, the grade of the top of a pipe shall be at least 0.91 m (3 feet) under the pavement surface. In areas within 6.10m (20 feet) from the edge of pavement where signs or delineators are located, utilities shall be buried to a depth of not less than 1.52 m (5 feet). Place utilities at least 600 mm (2 feet) under sidewalks, paved ditches, unlined ditches or gutters. The UDOT Region/District Director or his authorized representative may require a greater depth of bury when it is decided necessary to avoid known conflicts, the depth of bury and conflict shall be noted in the permit.

(ii) For flexible pipe under pavement, minimum depth of bury shall be 1 m (3 feet) or 1/2 the outside diameter of the pipe whichever is greater.

(c) Depth of bury less than the above may be permitted only when it can be shown by the company that compliance would be unreasonably costly and written approval has been obtained from the UDOT Region/District Director or his authorized representative.

(d) Where less than minimum depth of bury is essential to avoid the laying of pipelines below the permanent water table, the top of pipe must not project into the pavement subbase. The depth of the pipe shall be approved by the UDOT Region/District Director or an authorized representative and shall be protected with a casing or capping acceptable to the Department.

(e) Cover for pipelines carrying materials which are flammable, corrosive, expansive, energized, or unstable (particularly as carried at high or potentially high pressures) may not be reduced below acceptable safety limits.

(3) Encasement.

(a) Utilities and persons shall use casings for all pipes carrying hazardous transmittants which are flammable, corrosive, expansive, energized or unstable. The wall thickness of the casing shall be reviewed and approved by UDOT's Structures Division based on depth of bury, diameter of the casing and other local conditions at the site. Lines shall avoid highway structures especially those at depressed grade.

(b) A casing shall be required for jacked or bored installations of coated carrier pipe unless there is reasonable assurance against damage to the protective coating. Rigid encasement or capping shall be required if support of pavement might be impaired by a change in shape of a flexible pipe. Encasement shall be required for any pipeline located within minimum clearances or near bridge footings or other elements of unusual hazard.

Where federal regulations including 49 CFR Part 192 require, UDOT will allow the use of heavy wall, extra strength pipe approved by the UDOT Region Director or his authorized representative in lieu of casings as required by the two paragraphs above.

(c) Where casings are used to cross a non-Interstate highway, the casing pipe shall extend a minimum of 10 m (30 feet) beyond the traveled way and at least 1.5 m (5 feet) beyond the toe of fill slopes whichever is greater. This shall be the case except when the utility is located longitudinal to the highway and outside the roadway prism and longitudinal to the highway under the surfacing when permitted. Encasements will not be required in these instances. On curbed sections, the casing shall extend outside the outer curb. On freeways, expressways and other controlled access highways, casings shall extend to the access control lines.

(d) Where there is a concentration of utility crossings at any one location, utility galleries shall be considered. Utility galleries may consist of concrete box structures or large diameter reinforced concrete or corrugated steel pipe.

(e) Vent stand pipes shall be located and constructed so as not to interfere with maintenance of the highway and shall preferably be located at the fence or right-of-way line. Vents shall be required for galleries enclosing carriers of fuel.

(f) Casings shall be considered for pipeline crossings of a highway as follows:

(i) As an expediency in the insertion of a carrier pipe crossing where casing is necessary in order to avoid open trenched construction.

(ii) As protection to the carrier pipe from external loads or excessive vibrations either during or after construction of the highway.

(iii) It is considered advisable to provide a means for conveying leaking fluids or gases away from the area directly beneath the traveled way to the point of venting at or near the right-of-way line.

(iv) Consideration for encasement or other suitable protection for any pipeline shall be given where there shall be less than minimum bury, the facility shall be located near footings of bridges or other highway structures where the utility shall be located in an area of unstable or subsiding ground or at any other location when there may be hazards.

(4) Installation.

Installation or replacement of pipelines along or crossing existing highways shall be controlled by the Department's specifications as described under Pipelines above. Trenched construction, when allowed, shall be accomplished in accordance with UDOT specification for "Excavation on State Highway Rights-of-way" found in Appendix B.

R930-6-9. Power and Communication Lines.

(1) Underground Electric Power and Communication Lines.

In general, controls previously outlined for pipelines as related to depth of burial, encasement and installation, shall be applied to underground installations of electric power and communication lines see Section V.D.2.a. Other controls shall be as follows: longitudinal installations shall be located on uniform alignment, preferably parallel to the roadway at or adjacent to the highway right-of-way line and beyond the clear zone and, as a minimum, 1.5 m (5 feet) beyond the fill slope, ditch or curb lines. On conventional highways, crossings of underground lines shall be suitably encased in protective conduit extending beyond the recovery and clear zone area, or 10 m (30 feet) beyond the edge of traveled way or 1.5 m (5 feet) beyond the slope, ditch or curb lines, whichever is the greater distance. On urban curbed sections conduit shall extend outside of the outer curbs of the roadway. On freeways, expressways, and other controlled access highways, longer encasement shall be required to extend to the access control lines and where appropriate under frontage roads for a sufficient distance to allow future widening of the highway facilities. Installation parallel to the highway right-of-way shall be located a minimum distance away from the highway right-of-way line to allow room for installation equipment. However, loops shall be provided which will allow placement of above ground appurtenances such as splice box closures, underground distribution terminals, etc., as close to the highway right-of-way as is possible, or outside of the right-of-way on private right-of-way as determined by the UDOT Region Director or his authorized representative.

(2) Overhead Power and Communication Lines.

The type of construction, vertical clearance above pavement and location of poles, guys and related ground mounted utility appurtenances along the roadway are considered to be factors of major importance to preserve a safe traffic environment, the appearance of the highway and the efficiency and economy of highway maintenance. Careful consideration, shall, therefore, be given in determining proper location for overhead utility facilities. Where ground-mounted utilities are to occupy the space between the edge of pavement and the right-of-way line, they shall be placed as far as possible from the traveled way and beyond the recovery and clear zone area. In the interest of preserving a safe roadside, highway appearance and efficiency of highway maintenance operations, the following controls shall be used for installation of overhead electric power and communication lines.

(a) Type of Construction.

(i) Longitudinal installations on the highway right-of-way shall be limited to single pole construction.

(ii) Joint use single pole construction shall be

encouraged at locations where more than one utility or type of facility is involved. Particular emphasis shall be placed on this requirement at locations where the right-of-way widths approach the minimum needed for safe operations.

(b) Vertical Clearance for Power Lines, Communication Lines and Other Lines.

(i) The vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges shall conform with the current edition of the National Electrical Safety Code, except the minimum vertical clearance above highway pavement shall exceed the National Electrical Safety Code minimum by 3.91 m (13 feet) at highway intersection and 2.44 m (8 feet) at all other locations.

(ii) Companies planning on attaching a cable to other utility company poles shall obtain a variance from UDOT by completing the "Communication Cable Release Form" (No. T-600) in Appendix C of this manual before a permit shall be issued by UDOT's District Permits Officer.

(iii) For Buried Cable see Section V.D.2.

(c) Location.

(i) The location of poles, guys and related ground-mounted utility facilities on freeways and other highways having partial control of access shall conform with AASHTO's "A Policy On the Accommodation of Utilities within Freeway Right-of-Way" February, 1989 edition.

(ii) On and along non-Interstate highways, poles and related facilities shall be located at or as near as possible to the right-of-way line. As a minimum the poles shall be located outside the recovery and clear zone area for the highway section involved. Pole locations should provide for the least conflicts with highway maintenance. There is no single dimension for the width of a clear zone, but shall be based upon the 1990 Edition of the AASHTO "Policy on Geometric Design of Highways and Streets" and the AASHTO "Roadside Design Guide".

(iii) Where there are barrier curbed sections, the utility poles shall be located as far as practicable behind the face of outer barrier curbs with a minimum of 460 mm (18 inches) and preferably behind the sidewalk section.

(iv) Location of overhead utility installations on highways with exceptionally narrow rights-of-way or on urban streets with abutting improvements may be given a special consideration and shall be resolved in a manner consistent with prevailing limitations and conditions. Techniques permitted by governmental or industry codes that are conducive to a safe traffic environment shall be employed.

(v) Guy wires to ground anchors and stub poles may not be placed between a pole and the traveled way where they encroach upon the clear zone area. Exceptions may be allowed by the UDOT Region/District Director or his authorized representative. Guy wires within the right-of-way may require delineation.

(vi) Longitudinal installations of poles, guys or other related facilities may not be located in a highway median. When crossing a highway, facilities may not be located in a highway median less than 30 m (100 feet) in width. Poles and other appurtenances for highway lighting may be located in the median if other alternatives are determined to be impractical and when suitable protection can be provided to the highway user.

R930-6-10. Installation on Highway Structures.

(1) Attaching utility lines to a highway structure can materially affect the safe operation of traffic and the efficiency of maintenance.

(2) Utility lines will not be permitted to be installed on bridges except in extreme cases where there is a showing that any other utility location is extremely difficult and unreasonably costly to the utility consumer. In order to be considered "extremely difficult" or "unreasonable cost", the total cost of alternate routing shall exceed the cost of attaching to the structure by four times and comply with Section IV.F.6 of this manual.

(3) In extreme cases covered by the paragraph above, the location and design of utility installation on bridges shall be subject to review and approval or denial by the UDOT Structures Department. Appeal to the UDOT Deputy Director may be requested if the utility disagrees with the decision of the UDOT Region/District Director or his authorized representative.

(4) This does not apply to utility lines serving facilities required for operating the highway.

(5) Attachment of a pipeline carrying a hazardous transmittant shall be avoided whenever possible. When allowed and the pipeline attachment is cased, the casing shall be opened or vented at each end to prevent possible buildup of pressure and to detect leakage of gases or fluids. When located near a live stream the casing shall be constructed so that leakage of the transmittant will not enter the stream.

(6) Attachment of a utility may not be considered unless the structure is of a design that is adequate to support the additional load and can accommodate the utility without compromise of highway features.

(7) Manholes for utility access may not be allowed in a bridge deck.

(8) The entire utility installation on the structure shall be mounted so as not to reduce the vertical clearance otherwise available.

(9) Utility facilities which shall occupy a position beneath the structure floor preferably shall be located between the outer girders or beams or within a cell and at an elevation above the lowest superstructure steel or masonry.

(10) Attachments of utility facilities to the outside of a structure may not be permitted unless there is no reasonable alternative.

(11) Utility facility mountings shall be of a type which may not rattle due to vibrations caused by traffic. Communication and electrical power line attachments shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. The cable shall preferably be carried to a manhole located beyond the back wall of the structure. Carrier pipe and casing pipe shall be suitably insulated from electrical power line attachments.

(12) Acceptable utility attachment methods are hangers and/or roller assemblies suspended either from inserts from the underside of the bridge floor or from the hanger rods clamped to the flange of some superstructure member.

Bolting through the bridge floor may not be permitted.

(13) Clearances of the utility facility from structure members shall conform to all governing codes and may not render any portion of the structure inaccessible for any maintenance function.

(14) The utility shall be required to make satisfactory provisions for the lineal expansion and contraction of its facility due to temperature variations.

(15) The permit shall make the utility responsible for restoration or repair of any portion of a structure or highway damaged by utility facility use.

(16) Where a casing is not provided for a utility pipeline attachment to a structure additional protective measures shall be taken. These measures shall employ a higher factor of safety in the design, construction and testing of the pipeline than would normally be required for cased construction.

R930-6-11. Utility Facility Locations Within Scenic Enhancement Areas.

(1) New utility facility shall be avoided whenever possible within scenic corridor strips, overlooks, rest areas, recreation areas, public parks and historical sites and adjacent rights-of-way.

(2) New underground utility installations may be permitted within such areas where they do not require extensive removal or alteration of trees visible to the highway user or do not impair the appearance of the area.

(3) New overhead installations of communication and aerial power lines shall be permitted only when other utility locations are not available or are extremely difficult and unreasonably costly, or are less desirable from the standpoint of scenic appearance. Installations may be allowed when the placing of the utility facility underground is not technically or economically feasible or is more detrimental to the scenic appearance of the area.

(4) Overhead installations may be allowed where the proposed installation can be made at a location and in a manner that may not significantly detract from the scenic quality of the area being traversed and the facility can be designed in such a manner which shall give adequate attention to aesthetic values.

(5) Utility installations that are needed for highway purposes, such as for continuous highway lighting, to serve a weigh station, rest or recreational area, shall be located and designed to conform with the above requirements.

R930-6-12. Miscellaneous.

(1) Preservation, Restoration and Cleanup.

The size of a disturbed area shall be kept to a minimum. Construction methods shall be in accordance with UDOT specifications and in compliance with the conditions of the utility line agreements and permits. Unsatisfactory restoration work shall be promptly repaired by the Company.

(2) Spraying, Cutting and Trimming of Trees.

The Company shall be required to obtain written permission from the Department before disturbing trees which are located within the highway right-of-way. UDOT shall give written permission for only light trimming. When the removal of a tree is permitted, the stump shall be removed and the hole properly backfilled. The UDOT Region Director or his authorized representative may require replacement with several trees of the same species to assure equal restoration and mitigation in compliance with federal requirements.

(3) Servicing, Maintenance and Repairs.

All utility facilities shall be kept in a good state of repair both structurally and from a standpoint of appearance.

R930-6-13. Signs, Signals, Lighting, Crosswalks, Curb, Gutter and Sidewalks.

(1) This section describes UDOT policies regarding traffic signs and street name signs, traffic signals, highway lighting, crosswalks, curb, gutter and sidewalks located within the rights-of-way of any State highway. Requests for the installation of and permission to install any of these facilities shall be made by permit from the appropriate UDOT Region/District Director or his authorized representative.

(a) Community Name Signs.

UDOT shall install all community name signs. Signs for communities shown on the official highway map shall be installed by UDOT with the official community name in conformance with the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" (MUTCD) and Safety Standards. Signs shall be installed on or as close as possible to corporate boundaries. If the community desires to provide a more elaborate notice or identification of the community and/or other information, it shall be done outside the existing right-of-way and in accordance with the rules for outdoor advertising.

(b) Street Name Signs.

The installation and maintenance of street name signs are not functions of UDOT. Local authorities may install street name signs within the rights-of-way of State highways. All signs placed within the right-of-way shall conform to "MUTCD" standards.

(c) Traffic Signs, Signals, Lighting and Crosswalks.

The installation and maintenance of these items conform to "MUTCD" and UDOT standards.

(d) Modification of Existing Traffic Control Devices.

When it is necessary to relocate traffic control signs, traffic signal poles, circuitry and appurtenant equipment or other traffic control devices as part of the permitted work, the utility shall accomplish said relocation at its expense according to a design approved by UDOT. These modifications require the applicant to provide a traffic study to evaluate the impact.

(e) Damage to Existing Traffic Control Equipment.

Any damage to existing traffic control equipment shall be repaired or restored at permittee's expense in accordance with plans approved by UDOT.

(f) Sidewalks.

Except as outlined in Policy 08A-2, "Pedestrian Safety Facilities on Construction Projects", the installation of sidewalks is not normally the responsibility of UDOT. However, when a road is reconstructed and existing sidewalks are removed or destroyed, or when obligated to do so, UDOT shall construct or reconstruct said sidewalks to current standards.

(g) Curb and Gutter.

In the interest of vehicle and pedestrian safety, efficient movement and regulation of traffic, and the more effective and economical maintenance of highway surface and drainage, UDOT may, in accordance with UDOT policy, install new curb and gutter when one or more of the conditions listed below exist.

(i) Traffic volumes require the utilization of the entire right-of-way.

(ii) Intersection channelization is needed.

(iii) Additional right-of-way is necessary to provide:

(A) standard or bituminous ditch treatment to prevent scour;

(B) the proper and safe roadway width and slopes; and

(C) the cost of curb and gutter, plus any additional cost made necessary by curb and gutter and installation are less than right-of-way costs.

(D) Ponding occurs in an unpaved ditch because of extremely flat grades (normally less than 0.3%), and drainage does not function properly except in paved concrete gutter.

(E) Traffic needs to flow through a narrower than normal structure.

(F) Restriction of access and parking is necessary to protect pedestrian traffic and to obtain full utilization of the street for required capacity.

(G) In order to control highway runoff after curb and gutter is installed, UDOT should pave full width between the curbs to be in compliance with Policy 06A-43 "Widening Pavements to Curb and Gutter".

R930-6-14. Driveways.

(1) General Provisions.

(a) Control of driveway connections is necessary to provide efficient and safe operation of highways and to utilize full potential of the highway investment. Abutting landowners have rights-of-access consistent with their needs and the safe and efficient operation of the highway. Road users are to be provided reasonably safe highways for travel and efficient expenditure of public highway funds. UDOT is responsible to regulate and control the location, design, construction and operation of access driveways, to reconcile and, to the extent feasible, to satisfy the needs and rights of both the road user and abutting landowners

(b) Since UDOT shall utilize the whole of the right of way to the best advantage for highway purposes, by controlling the number, location, width and design of driveways from the adjacent private property.

(c) Driveway design and location should assure reasonably good service to driveway users and at the same time minimize interference to highway traffic.

(d) When there are several adjacent roadway establishments or when the probability of commercial development exists, consideration of a frontage road shall be given to reduce the number of connections to the highways. If impossible, the minimum number of driveways shall be allowed so that all the establishments can be served. Several businesses may share one driveway. Encroachment on the adjacent property frontage may be permitted only when an agreement is entered into by the adjoining property owners for joint usage of the driveway.

(e) National and local research concludes that poorly placed and/or poorly designed driveways and other access points can contribute to degrading the operational capacity and the safety of highway facilities. In addition to providing reasonable access to all properties, it is the goal of the State Highway system to maximize the safety and the efficiency of highways to the traveling public. To this end, six specific types of access management techniques shall be employed in the review of driveway permits. Appropriate standards for each of these access management techniques, based on sound traffic engineering principles, shall be reviewed and enforced by each Region Traffic Engineer prior to granting appropriate permits. The six applicable access management techniques include the following:

(i) Unsignalized Access Spacing;

(ii) Corner Clearance;

(iii) Signalized Access Spacing;

(iv) Medial Placement and Design;

(v) Access Separation from Interchanges; and

(vi) Speed Change Lanes.

New or modified access permits may be denied based on traffic engineering standards associated with each of the six primary access management techniques, if, in the judgment of the Region Traffic Engineer, new or modified access points will negatively affect the safety or the efficiency of the highway users.

(2) Provisions Governing the Location, Design and Construction of Driveways.

(a) General

The following directives shall apply in relation to the construction of driveways within the rights of way of any highway controlled by these regulations:

(i) Dimension controls are an integral part of these regulations. A single set of values would not be suitable for all situations. Accordingly, a range of values is given for each control dimension within which actual dimensions shall conform. Where total site traffic volumes exceed 500 ADT or projected highway traffic volumes exceed 5,000 ADT, a more detailed evaluation shall be required based upon Figures for "Access Management of Streets and Highways" in (Appendix "A").

(ii) Driveways or access points by a railroad at-grade crossing must be 76.20m (250 feet) from the railroad crossing pursuant to rule R930-5.

(b) Permits.

(i) Anyone intending to construct a driveway from the main traveled way of the right-of-way line shall make written application to and secure a permit from the appropriate UDOT District office before commencing construction. Permit applicants must also comply with all environmental laws before the UDOT Region/District Director or his authorized representative can issue a permit to proceed with any work.

(ii) The type of driveway with approved dimensions shall be clearly stated in the permit.

Two copies of the permit shall be issued. One copy is for the applicant, and the other shall be prominently displayed at the construction site during the period of construction. Failure to properly display the permit in compliance with this

regulation may result in the cancellation of the permit.

(c) Buffer Area.

If the buffer area between the traveled way and the right-of-way line requires regrading by cutting or filling work shall be done in a manner to insure adequate sight distance for traffic operation, proper drainage, suitable slopes for maintenance operations and good appearance. Trees, shrubs, ground cover or other landscape features may need to be removed, replaced or suitably adjusted. The buffer area must be free of any encroachment that would hinder traffic. The buffer area between driveways shall be grated or landscaped to prevent use by vehicles. This may be accomplished by appropriate physical barriers such as curbing, fencing, etc. in a manner that does not impair clear sight across the area.

(d) Parking.

(i) Each roadside business establishment shall provide sufficient private parking or storage space to handle the needs of that business. Parking or storage of vehicles on the highway right-of-way is not allowed unless approved by the Region/District Director. Traffic circulation on these areas must be arranged to restrict backing onto the highway. When the parking or storage area is deemed to either be inadequate or buildings or other installations do not conform to the required setback dimensions as outlined in these rules, the driveway or driveways shall be located and constructed so as to prevent the illegal storage or backing of vehicles onto the highway right-of-way (Section 72-7-105 - "Obstructing Traffic on Sidewalks or Highways Prohibited" and Section 41-6-106 - "Backing When Permissible").

(ii) Where business establishments are located on the corner of an intersection, parking shall be prohibited for 10 m (30 feet) from the corner in each direction.

(e) Sight Distance.

(i) Driveways shall be located to optimize sight distance along the highway. Any encroachment on sight distance shall be allowed only when approved by the UDOT Region/District Director or his authorized representative prior to construction. Sight distances shall be in accordance with current AASHTO guidelines for Decision Sight Distance.

The Intersection Sight Distance for Passenger Cars is based on information taken from the 1994 edition of the AASHTO Policy on Geometric Design of Highways and Streets, Chapter 9, At-Grade Intersections, Case III - Stop Control on Minor Roads.

(ii) Driveways with less than the required minimum sight distance may require changes to existing highway conditions such as right and/or left turning lanes, use of frontage roads, or other changes as required by the UDOT Region/District Director or his authorized representative.

(iii) Additional sight distance may be required for multilane highways. In these instances, a UDOT traffic engineer shall make a traffic safety evaluation. Findings from the evaluation shall be used in designing the driveway for safe ingress and egress.

(iv) Parking lane space shall be restricted to provide adequate radii and sight distance for turning into and out of a driveway with vehicles that are expected to use the driveway.

(f) Setback.

Improvements on private property adjacent to the right-of-way shall be so located that parking, stopping and maneuvering of vehicles on the right-of-way may not be necessary. Setback is normally controlled by the local government agency through its planning and zoning ordinances. However, a careful evaluation shall be conducted so that commercial operations do not service vehicles on highway right-of-way and so that parking operation does not require backing onto the highway.

(g) Location and Type.

(i) The effect of driveway location on traffic capacity and operation as well as safety should be considered. Factors to be considered may include acceleration, deceleration, weaving, blocking of driveway due to queuing at intersections, sight distance, impact on traffic signal operations, signal coordination and railroad crossings.

(ii) Driveways generally fall into two categories. See UDOT Standard Plan Drawing No. 715-1.

(A) Open driveway with radius curve on returns.

(B) For flared driveways on each side of drive.

The type of driveway with approved dimensions shall be clearly stated in the permit. Any change of the driveway type (residential, industrial, commercial, farm etc., and appropriate dimensions) shall not occur until a permit is issued by the appropriate UDOT Region office.

(h) Driveways Allowed, Minimum Distances.

The number of driveways allowed and the minimum distance between driveways shall be determined to be either of the following options as determined by the Region Traffic Engineer:

(i) Speed / Spacing Option:

TABLE 1

Posted Speed Limit Km/hr (MPH)	Driveway Spacing m (Feet)
40 Km/hr (25 mph)	32 m (105 feet)
50 Km/hr (30 mph)	38 m (125 feet)
60 Km/hr (35 mph)	46 m (150 feet)
70 Km/hr (45 mph)	70 m (230 feet)
80 Km/hr (50 mph)	84 m (275 feet)

(ii) Frontage / Spacing Option:

(A) Frontages of less than 30 m (100 feet) shall be limited to one (1) two directional driveway or two (2) one directional driveways with minimum spacing as shown:

TABLE 2

	Urban	Rural
Farm and Residential:	3.6 meters (12 feet) minimum	6 meters (20 feet) minimum
Industrial and Commercial:	9 meters (30 feet) minimum	9 meters (30 feet) minimum

(B) Frontages of 30 m (100 feet) to 150 m (500 feet) shall be allowed not more than 2 driveways and the minimum distance between double driveways shall be as follows:

TABLE 3

	Urban	Rural
Farm and Residential:	15 meters (50 feet) minimum	30 meters (100 feet) minimum
Industrial	9 meters	15 meters

and Commercial:	(30 feet) minimum 15 meters (50 feet) desirable	(50 feet) minimum

(C) Frontages with excess of 150 m (500 feet) shall be allowed not more than 3 driveways and the minimum distance between them shall not be less than 30 m (100 feet).

(D) Contiguous property which has more than one (1) frontage abutting State Highways shall have a maximum of two (2) driveways per frontage.

(i) Driveway Geometrics.

Many factors must be considered in the location and placement of driveways. Factors to be considered include: the driveway width shall be adequate to properly handle the anticipated type and volume of traffic, and shall be within the limits specified for the particular conditions and type of roadside establishment. Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety. The width and radii treatment is specified below:

(i) Width of Driveway (Urban and Rural).

TABLE 4

Farm: 4.8 m (16 ft) minimum to 9.6 m (32 ft) maximum
Residential: 3.6 m (12 ft) minimum to 6 m (20 ft) maximum

Industrial and Commercial:
One-directional: 4.6 m (15 ft) minimum to 9 m (30 ft) maximum
Two-directional: 7.6 m (25 ft) minimum to 15 m (50 ft)* maximum

Exceptions to driveway widths based on safety must be approved by the UDOT Region Director.
*To be supported by traffic study.

(ii) Edge Clearance.

Edge clearance is the distance from the edge of the driveway to the adjacent property. All portions of the driveway shall be within the frontage boundary line and its location will be determined based on either a traffic study or the following minimum standards, at the discretion of the region traffic engineer:

TABLE 5

	Urban	Rural
Farm and Residential:	4.6 m (15 ft) desirable minimum	6.0 m (20 ft) desirable minimum
Industrial and Commercial:	3.0 m (10 ft) minimum	4.6 m (15 ft) desirable minimum

Exceptions to edge clearance width based on safety must be approved by the UDOT Region/District Director or his authorized representative.

(iii) Radius of Curvature (if open concrete drive is used).

At junction of driveway and pavement, radius of curvature may not encroach in the edge clearance or corner clearance in Figure 3 in Appendix A. Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety.

TABLE 6

	Urban	Rural
Farm and Residential:	3.0 m (10 ft) min. to 4.6 m (15 ft) max.	6.0 m (20 ft) min. to 9.0 m (30 ft) max.
Industrial and Commercial:	3.0 m (10 ft) min. to 18 m (60 ft) max. 9.0 m (30 ft) desirable	7.6 m (25 ft) min. to 19.8 m (65 ft) max.

(iv) Driveway Profile.

(A) Driveway gradients shall be within the following minimum and maximum ranges, with the minimum percent grade being desirable:

TABLE 7

Recommended Grade Changes (D)

	(D) ADT	(D) Minimum	(D) Maximum
Low Volume Driveway	(0-500)	6 percent (plus or minus)	Controlled by Vehicle Clearance
Medium Volume Driveway	(500-1500)	3 percent (plus or minus)	6 percent (plus or minus)
High Volume Driveway	(greater than 1500)	0 percent	3 percent (plus or minus)

VERTICAL GEOMETRICS FOR DRIVEWAY
(Refer to Figure C)

(B) Without highway edge curb, negative slope.

(I) From edge of traveled way to outer edge of shoulder, gradient same as shoulder slope.

(II) From outer edge of shoulder continue gradient same as shoulder slope. If downward gradient is necessary, it should be not more than 6 percent.

(III) At all slope changes make sure that a standard automobile can pass without dragging.

(C) Without highway edge curb, positive slope.

(I) From the edge of traveled way to outer edge of shoulder, gradient same as shoulder slope.

(II) From the outer edge of shoulder continue same gradient as shoulder. If upward gradient is necessary, not more than 6 percent.

(III) At all slope changes check for vehicle clearance at front and rear overhang.

(D) With highway edge curbs.

(I) Gutter line to sidewalk (if any), maximum slope difference of 6 percent between downward cross slope of traveled way and upward slope of driveway. Lower the profile of the sidewalk if necessary.

(II) Beyond outer edge of sidewalk maintain a gradient of 6 percent.

(v) Vertical Curves.

(A) Vertical curves shall be as flat as feasible and at least 6 m (20 feet) long. To prevent vehicle center or overhang drag, vertical curves shall avoid a hump or dip greater than 150 mm (6 inches) within a wheelbase of 3 m (10 feet). To prevent center or overhang drag with some allowance for load and bounce, crest vertical curves should not exceed a 75 mm (3-inch) hump in a 3 m (10-foot) chord and sag vertical curves may not exceed a 50 mm (2-inch) depression in a 3 m (10-foot) chord. Rolled gutters crossed by traffic may not be deeper than 50 mm (2 inches).

(B) Deviations from these specifications may only be permitted after written approval is obtained from the UDOT

Region/District Director or his authorized representative.

(C) Single driveways shall intersect the roadway at right angles. Where two driveways are used on one frontage and are to be used for access to and from both directions of travel on the highway, each driveway may be placed at an angle other than a right angle with the roadway edge, but the driveway angle may not be less than the specified minimum. See drawing for angled two-way driveways with limited turns in section on Access Management of Street and Highway in "Appendix A".

(D) On uncurbed sections of highway the gradient of the driveway shall conform to the slope of the shoulder from the edge of the traveled way to the outer edge of shoulder and thence slope downward on a suitable grade to the gutter or low point over a culvert (swale where a culvert is not used). Thereafter, it shall continue downward or upward to match the abutting property. In some cases, it may be necessary to build an uncurbed gutter of a special design to prevent drainage onto adjacent private land.

(E) Where curbs are used along the roadway and sidewalks are provided or contemplated, the gradient of the driveway usually should fit the plane of the sidewalk. If the difference in elevation of the gutter and the sidewalk is such that this is not practical, then the sidewalk shall be lowered to provide a suitable gradient for the driveway. In such case, the surface of the sidewalk shall be sloped gently from either side of the driveway. Vertical curves onto driveways shall be flat enough to prevent dragging of central or overhung portions of passenger vehicles.

(j) Other Criteria.

(i) Driveway Angle.

TABLE 8

Farm and Residential	90 degrees required except in special cases where minimum is 80 degrees
Industrial and: Commercial:	
For two-directional use:	90 degrees required except in special cases where minimum is 80 degrees
For one-directional use: (right turns only)	
Entrance:	90 degrees maximum, 60 degrees minimum
Exit:	90 degrees maximum, 60 degrees minimum

(A) Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety.

(B) Corner Clearances at Intersection:

Urban - 18 m (60 ft) minimum

Rural - 30 m (100 ft) minimum

At signalized intersections increase to 30 m (100 feet).

See Figure 3 in Appendix "A".

Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety.

(iii) Surfacing.

Driveways shall be appropriately surfaced between the traveled way and the service area. On paved highways, the driveway shall be hard surfaced to the right-of-way line or 15 m (50 feet) with concrete or bituminous surfacing of suitable quality unless otherwise authorized by the UDOT Region/District Director or his authorized representative.

(iv) Drainage.

All driveways and buffer areas shall be constructed to maintain a positive drainage system within the highway right-of-way and may not alter the stability of the roadway subgrade. Surface run-off originating on property under development shall be disposed of in accordance with the master drainage plan of the cities and counties. If the city or county does not have a master plan, anything in excess will be retained on site. The State is not liable for the quality of drainage waters originating at service stations or special industrial processing plants which are directed into irrigation canals through highway drainage system. Such drainage concerns should be the subject of separate agreements and permits by the developers and irrigation companies. All culverts, catch basins, drainage channels and other drainage structures required within the buffer area and under the driveways as the result of the property being developed, shall be installed in accordance with UDOT Standard Plans and the state and/or local health ordinance specifications when applicable.

(v) Lighting.

Directing light beams toward the eyes of approaching drivers on the highway is prohibited. All lighting equipment for the roadside development shall be located off the highway right-of-way.

(k) Control Signing.

(i) The relocation or installation of highway signs, signals, lighting devices or other traffic control devices necessitated by a proposed driveway shall be by UDOT or its agent at the permittee's expense.

(ii) The owner shall pay the cost of the original sign and installation by UDOT, after which UDOT shall be responsible for normal maintenance.

(l) Drive-in Business.

A permit for access to a drive-in business may not be granted unless adequate on-premise parking and storage space is provided. Parking or storing of vehicles on the State right-of-way may not be permitted. Access to the business should be from a local street system wherever possible. When the business is adjacent to a state highway, the local agency shall require the business owner to coordinate with UDOT prior to issuing a building permit.

(m) Disabled Pedestrians.

Work to be done shall comply with applicable federal law and UDOT Standard Drawing No. 715-2A "Disabled Pedestrian Access".

(n) Inspection

See Section V.C.5. for inspection.

(o) Standards.

All features such as curbs, gutters, driveways, sidewalks, drainage structures and grates, etc., which are constructed on highway right-of-way as allowed by these rules, shall conform to current UDOT Standard Plans.

R930-6-15. Right-of-Way Encroachments.

(1) Highway Encroachments.

(a) No building or structure of any type shall be placed upon State Highway rights-of-way unless authorized by a permit obtained from UDOT.

(b) No part of the right-of-way shall be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of advertising, or the conduct of private business. Requests for deviations, however, may be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety and shall be in the public interest.

(2) Limited Time, Special Highway Encroachments.

Permanent private advertising or business endeavors on federally funded or other state highway rights-of-way is prohibited. The use of the right-of-way on a limited time basis for special advertising purposes may be allowed. A permitted encroachment is to occupy the right-of-way for a time not to exceed one week. These authorized encroachments may not compromise traffic flow or safety and shall be in the public interest.

(3) Permits.

For special encroachments, such as parades, Christmas decorations, handbills, banners advertising special events, etc., any individual, political entity, partnership or corporation may apply for a special permit. Requests for encroachments may be made to the Region/District Director or his authorized representative and approval may not compromise traffic flow or safety and shall be in the public interest.

(4) Special Limitations.

All permits issued for special encroachments shall be subject to the following conditions:

(a) Red or Reddish Colored Lights.

Red or reddish colored decorations or advertising lights may not be permitted within the right-of-way.

(b) Clearance Over Highway Surface.

Any decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item placed within the right-of-way shall have a minimum clearance of 6 m (20 feet).

(c) Utility Poles.

No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall be attached to a utility facility without written permission of the appropriate utility company.

(d) Signs and Other Devices.

(i) No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall block the normal view of any official highway sign or other traffic control device and signals.

(ii) Advertising signs placed on owners real property within 90 m (300 feet) of highway rights-of-way may require a permit from the UDOT Region Director or an authorized representative in accordance with Section 72-7-503 - "Advertising - Permit Required -Penalty for Violation".

(iii) No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall be of such shape, size, color or design to any UDOT traffic control sign, signal, marking or device.

(iv) No attachments of any type will be allowed on traffic signals.

(e) Sight Obstructions.

(i) No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall obstruct the normal view of traffic.

(ii) In accordance with Utah Code Section 41-6-19 "Removal of Plants or Other Obstructions Impairing View, Notice to Owner-Penalty", owners of real property next to highway rights of way can be ordered to remove any trees, plants, shrubs or any other obstructions that obstruct the view of motorists and thereby constitute a hazard.

(f) Obstructing Traffic.

No decoration, display structure or other advertising or decoration item shall be placed within the right-of-way that may obstruct, impede or endanger the normal flow of traffic.

(g) Insurance.

Permittee shall be required to have in force a liability insurance policy, naming UDOT as an additional insured, the amount of which shall be determined by the UDOT Region/District Director or his authorized representative.

(h) Construction Zone.

To assure the safe placement of the encroachment, the permittee shall provide to and have approved by UDOT a traffic control plan for the construction site.

(5) Mailboxes.

(a) New Mailboxes.

(i) Application to install a new mailbox within the right-of-way of State Highways shall be made to the UDOT Region Director or his authorized representative.

(ii) All new mailboxes placed within the right-of-way of State Highways shall be constructed in conformance with UDOT's Standard Plan Drawings 725-1 and 725-1A.

(b) Existing Mailboxes.

(i) Owners of existing mailboxes which constitute a traffic hazard shall be notified in writing by the UDOT Region Director or his authorized representative. The owner shall correct any deficiencies to be in conformance with current safety standards and regulations of the Department of Transportation at his own expense within thirty (30) days of the receipt of the notice. A copy of the notice shall also be sent to the local postmaster.

(ii) If the owner fails to comply with the notice, a Region/District representative shall contact the postmaster to stop the delivery of mail until the owner complies with UDOT's policy.

(iii) Mailboxes and supports which are in poor repair and detract from the appearance of the highway, or if any part of the mailbox is within the shoulder of the road or is over 1270 mm (50 inches) high, it shall be considered as nonconforming and shall be reconstructed or replaced at the owner's expense.

(iv) Mailbox supports which do not comply with the following shall be considered nonconforming and shall be reconstructed or replaced at the owner's expense.

(A) Mailbox supports of wood with over 10,322 mm^2 (16 square inches) cross-sectional area.

(B) Mailbox supports of metal shapes if the supports are over 90 mm (3.5 inches) in greatest dimension, or on a pipe

of over 50 mm (2 inches) in diameter. (If such metal supports are deemed to be a hazard by the UDOT Region Director or his authorized representative, they shall be considered as nonconforming.)

R930-6-16. Specifications for Excavation on State Highway Right-of-Way.

(1) Purpose and Scope. These specifications are to provide uniform guidance for excavation within highway rights-of-way for gas, oil, telephone, power, sewer, water, signal or television and similar facilities. These specifications are implemented to cover special requirements of work contemplated in general maintenance, improvements and additions to utility systems.

(2) Except for emergencies no excavation shall be made without agreement or authorization from the Utah Department of Transportation.

(3) An emergency excavation may be made by a bonded contractor, public agencies or utility companies without prior approval if the excavation is to prevent loss of life or damage to property, and the company cannot contact the Utah Department of Transportation officials. In such emergency situations the excavating party shall contact the Utah Department of Transportation on the first working day following the excavation and complete a formal permit. Except for the prior-permit requirement none of the provisions of these specifications are waived for emergency situations.

(4) Transfer of Work.

Authorized excavation work covered hereunder shall not be subcontracted or otherwise transferred to others without prior written approval of the UDOT Region Director.

(5) Protection of Public During Construction.

(a) The contractor shall comply with all federal, state and local laws, and ordinances, including the "Manual on Uniform Traffic Control Devices" (MUTCD).

(b) The utility company or its contractor shall include a traffic control plan in its application for a permit. This plan shall define the limitations on contractor vehicle parking and materials storage within the clear zone unless protected by curb and gutter or other approved barrier. Access control during construction shall be described as well as protection of the public from any open excavation or other hazards. The traffic control plan shall be in conformance with the "Manual on Uniform Traffic Control Devices" (MUTCD).

(c) Construction operations shall be conducted so that a minimum amount of interference or interruption of highway traffic results. Inconvenience to residents and businesses shall be minimized. Safe and proper connections with all intersecting public or private roads or driveways shall be maintained at all times. These roads shall be kept in usable condition, except when approval is obtained for minimum closure from the governing official having jurisdiction over the street, or the property owner of private driveway.

(d) The contractor shall provide, erect and maintain all necessary barricades, warning lights, signals and signs, and provide watch persons and flaggers and take all reasonable and necessary precautions for the protection of the work and the safety of the public. Highways closed to traffic shall be protected by effective barricades. Suitable warning signs, illuminated at night, or other approved means shall be provided to mark the places where surfacing ends or is not compacted, or where there are other obstructions. All lights for this purpose shall be kept illuminated from sunset to sunrise. The contractor shall erect warning signs in advance of and at any place on the project where operations interfere with the use of the road by the public. Such warning signs shall be constructed and erected in accordance with the plans. Signs not required during non-work periods shall be removed or covered.

(e) Except in cases of emergency, full road closures may not be permitted unless authorized in advance by the UDOT Region/District Director or his authorized representative. Emergency services (e.g., police, fire and ambulance) shall be advised of the closure and proposed detour routes. No work, except emergency work, shall be done at night without prior approval of the UDOT Region/District Director or his authorized representative. Flaggers shall wear colored vests and hard hats and shall be provided with hand signs clearly recognizable by motorists. All flagging and traffic protection for the work shall conform to the requirements of the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" (MUTCD).

(6) Methods of Crossing.

Jacking or boring is preferred to open trench excavation, and shall be required in all cases of utility facilities crossing under and not parallel to paved surfaces, unless this is not feasible due to soil conditions, other utilities, substructures, or other conditions. Jetting by means of water or compressed air may not be permitted.

(7) Removal of Pavement, Sidewalks, Curbs, Etc.

The pavement, sidewalk, curb and gutter, driveway, etc. shall be cut vertically along the lines forming the trench so that the adjoining pavement is not damaged. The portion to be removed shall be broken up in a manner that does not cause damage to the pavement outside the limits of the trench. Any pavement damaged by operations outside the limits of the trench shall be replaced. Large broken paving materials shall be removed immediately from the site of the work.

(8) Repairs.

Only qualified and skilled workers shall make repairs to utility facilities.

(9) Flowable Fill.

(a) Unless otherwise agreed to by prior written agreement in all urban areas and on rural highways with high volume traffic as determined by UDOT, flowable fill shall be used for backfill under paved areas and shall be in conformance with the requirements of Section 605 for "Flowable Fill" of the State of Utah "Standard Specifications for Road and Bridge Construction," 1994 edition.

(b) Flowable Fill shall be discharged from the ready mix truck by safe and reasonable means into the trench to be filled. The fill shall be brought up to the bottom of the surface course and shall be finished to provide a uniform surface.

(c) When Flowable Fill is used for backfill the excavated materials shall be disposed of by the utility in an area outside of the highway right-of-way satisfactory to

UDOT's Region permits officer or inspector and shall comply with environmental requirements. In rural areas or location when its use would be impractical Flowable Fill may not be required. In such cases backfill shall be in conformance with the requirements of Section 220 for "Borrow, Granular Borrow and Granular Backfill Borrow" of the State of Utah "Standard Specifications for Road and Bridge Construction", 1994 edition.

(10) Compaction of Backfill.

Materials for backfill under paved or adjacent areas used by traffic shall be sand. All large broken concrete, peat, topsoil, loam, decomposed vegetable matter and similar materials obtained from excavation shall be removed from the site prior to beginning of backfilling. All backfill shall be placed in layers not over 150 mm (6-inch) loose measure in thickness. Compaction shall be obtained by mechanical rollers, tampers, or other approved means. Material for backfilling shall be properly moistened or watered to the correct moisture content to ensure proper compaction. Jetting or internal vibrating methods of compacting sand fill or similar methods of compacting sand or similar granular, free draining materials shall be permitted. No frozen material shall be used for backfill under paved surfaces. The UDOT Region/District Director or his authorized representative may require that the "dry" density of the backfill under pavements, sidewalks, curbs or other structures shall be not less than 96 percent of the laboratory standard maximum soil "dry" density as determined by compaction tests made in conformity with AASHTO, "Standard Specifications for Highway Materials and Methods of Sampling and Testing Part II," 1993 edition (AASHTO Designation T-99). The UDOT Region Director or his authorized representative may require the density of the backfill on road shoulders to be not less than 90 percent by the same standards.

(11) Restoration of Surfaces.

All street surfacing, curbs, gutters, sidewalks, driveways, or other hard surfaces that shall be removed in the performance of the work shall be restored in kind by the contractor in accordance with the specifications. Deviations of more than 6 mm (1/4 inch) between old and new work or within new construction shall be corrected. Such measurement shall be made from a 3 m (10 foot) minimum length straight edge.

(12) Protection of Paved Surfaces.

Track equipment shall use rubber cleats or paving pads when operating on or crossing paved surfaces.

(13) Time Limit and Other Requirements.

The contractor shall provide a paved surface on all locations remaining overnight at his own expense for all permanent pavement removed or damaged due to excavation, unless additional time is granted in writing by the UDOT Region Director representative. If weather conditions do not permit immediate placing of permanent pavement, a temporary 80 mm (3-inch) cold mulch shall be placed. When weather conditions are favorable, the temporary pavement shall be removed and replaced with a permanent pavement. If the gravel surface, gravel shoulders, or gravel surfaced approach roads become fouled with clay or other materials, the entire surfacing shall be removed and replaced with new gravel surfacing material. The repairs to pavement or surface shall include pavements which have been damaged with construction equipment. If the utility fails to restore the roadbed to a satisfactory condition, UDOT shall restore the roadbed to a satisfactory condition. The utility shall be charged the cost of the restoration.

(14) Restoring, Concrete, or Asphalt Surfaces.

(a) Temporary Surface

When trenches are excavated in paved traffic lanes and the surface is replaced overnight with a temporary 80 mm (3-inch) cold mulch surface. The gravel below the cold mulch shall be placed deep enough to provide 230 mm (9 inches) of gravel for asphalt surfaces, and 305 mm (12 inches) of gravel for concrete, and concrete base-asphalt wearing surfaces.

(i) Gravel shall be placed in the trench at the time it is back-filled. The temporary cold mulch surface shall be maintained by rolling, adding cold mulch, etc., to maintain a safe, uniform surface until the final surface is placed. Excess material shall be removed immediately.

(ii) Material for use on gravel surfaces shall be obtained from sound, tough, durable gravel or rock meeting the following requirements for grading:

TABLE 9

Passing No. 25 mm (1 inch) sieve	100 percent
Passing No. 12.5 mm (1/2 inch) sieve	70 percent - 100 percent
Passing No. 100 mm (4 inch) sieve	41 percent - 68 percent
Passing No. 218 mm (16 inch) sieve	21 percent - 41 percent
Passing No. .300 mm (50 inch) sieve	10 percent - 27 percent
Passing No. .075 mm (200 inch) sieve	4 percent - 13 percent

(b) Asphaltic Concrete Surface.

The subbase material and exposed edges of existing pavement shall be primed with a tack coat material. Asphaltic Concrete Mix meeting the requirements of Section 402 "Asphalt Concrete Pavement" of the State of Utah 1994 Edition of the "Standard Specifications for Road and Bridge Construction" shall be used. The thickness shall be equal to the adjacent surface thickness but not less than 75 mm (3 inches). On trenches crossing a highway, a Plant Mix Seal Coat shall be applied with a minimum width of 1.5 m (5 feet) on either side of the excavation. If longitudinal trench excavation is permitted under a paved road, a plant mix seal coat meeting the requirements of Section 406 "Plant Mix Seal Coat" of the State of Utah 1994 edition of the "Standard Specification for Road and Bridge Construction" shall be applied to a minimum width of 1.5 m (5 feet) over the trench or at least to the edge of the traveled lane on either side of the trench. If the trench is located in the shoulder area, a Plant Mix Seal Coat shall be placed from the edge of the traveled way to the outside edge of the shoulder. An alternative method shall be acceptable in cases where the asphalt is cut to straight uniform lines. This method shall use underlap joints and tack coat overlapping road surface in place of seal coat. Minimum thickness of asphalt patch shall be 125 mm (5 inches) when this method is used. Materials and methods shall conform to Division 400 "Surface Courses" of the State of Utah 1994 Edition of the "Standard Specifications for Road and Bridge Construction".

(c) Concrete Surface.

The subbase shall be pre-wetted just before placing the concrete. Joints and surfaces shall be made to match the

original surfaces. The thickness of concrete shall be equal to the adjacent concrete, but in no case less than 180 mm (7 inches) thick. Concrete shall meet Section 505 and be placed in accordance with (Portland Cement concrete pavement) Section 408 "Portland Cement Concrete Pavement" of the State of Utah 1994 Edition of the "Standard Specifications for Road and Bridge Construction".

(d) Concrete Base Asphaltic Wearing Surfaces.

This type of surfacing shall be constructed as described in 2. and 3. above.

(e) Gravel Surfaces.

Trenches excavated through gravel surfaced areas such as gravel roads and gravel shoulders, unpaved driveways, etc., shall have the gravel surface restored and maintained, except that the gravel shall be a minimum of 25 mm (1 inch) more than the thickness of the existing gravel.

(15) Cleanup.

At the completion of work all equipment, barricades and other items shall be removed from the right-of-way. All excess material shall be removed. Adjacent borrow pits and road shoulders used for storage of excavated material shall be smoothed and graded to their original contour.

(16) Seeding.

Any plant growth within the highway right-of-way that is disturbed or removed by the utility construction operations shall be restored by him through seeding or replanting as directed by the UDOT Region/District Director or his authorized representative.

(17) Records.

Construction plan drawings or sketches shall be submitted before proposed work shall be approved. Construction revisions shall be documented with as-constructed plans. The proposed installation shall be tied by survey to nearest permanent-type marker, such as right-of-way, street intersection, section corners, U. S. Geological Survey, and Coast and Geodetic Triangulation Stations. Ties to highway stations when survey work has been completed shall also be accepted. The tolerance of error in these ties may not exceed one minute in direction and 30 mm (0.1 feet) in distance. Any field changes made during construction shall be noted and corrected prints furnished the UDOT Region/District Director or his authorized representative within twelve calendar days after completion of construction.

(18) Liability

Any individual or organization performing work within the state highway right of way shall hold the Utah Department of Transportation and its employees, and the owners and employees of any other utility company within said right of way, free and harmless from all damages caused through such operations. Any defective workmanship discovered within three years of the completion of the job shall be immediately corrected.

R930-6-17. Longitudinal Access to Interstate Highway Right-of-Way for Telecommunication Facilities.

(1) General Provisions

(a) The provisions of this section are authorized by the Utah Code Section 72-7-108 Longitudinal telecommunication access in the Interstate highway system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.

(b) UDOT acquires rights-of-way which are adequate not only for the construction of the Interstate highway, but also for its safe operation and maintenance.

(i) The rights-of-way are devoted exclusively to public highway purposes, except that certain non-highway uses of rights-of-way are allowed which are in the public interest, provided the uses do not impair or interfere with the free and safe flow of traffic and highway maintenance.

(ii) UDOT recognizes that it is in the public interest for Providers to use the Interstate highway when it does not interfere with the primary purpose of the highway.

(c) The term "Provider" in this chapter includes the telecommunication entity applying for permits, conducting the work, hiring subcontractors the Provider hires to complete permitted work. All references to the Provider are inclusive.

(d) The Term "UDOT" in this chapter includes all authorized representatives of the Utah Department of Transportation.

(e) UDOT routinely inspects the work of the Provider for compliance with the license agreement, the permit, and State and Federal regulations. UDOT bills all costs of construction inspection to the Provider, and receives the funds from the Provider.

(i) The Provider notifies UDOT 24 hours in advance of conducting any construction.

(ii) Failure to notify revokes the permit, causes Provider to default the telecommunication provider license, and removes the Provider from the Interstate right-of-way.

(2) Permit Process

(a) Publication of Notice of the Opportunity: UDOT advertises the availability of opportunities for constructing and installing telecommunications facilities in Interstate System highway rights-of-way.

(b) The License Agreement. UDOT grants a license to any Provider who enters into a License Agreement with UDOT to use a right-of-way for construction, maintenance, repair, operation, subsurface line, and/or wireless towers.

(c) UDOT's review team consists of the Chief Utility Engineer or his/her representative, Region Permit Officer, Region Operating Engineer, Region Environmental Engineer, Region Right-of-Way Engineer, Region Hydraulics Engineer, Region Traffic Engineer, ITS manager, Preconstruction Engineer, Structural Engineer and other technical expert required to properly review planned facility installation.

(i) When the proposed project crosses several regions, a team from each region reviews the section of the project within their region.

(ii) The review teams submit their comments and recommendation for approval to the Chief Utility Engineer or designee.

(d) Permit application: The Provider performs work under a permit after the execution of a License Agreement.

(i) The Provider desiring a permit to use UDOT's right-of-way submits to the UDOT review team a detailed set of plans showing:

(A) proposed work

(B) all existing facilities within the UDOT right-of-way

(C) a traffic control plan

(ii) The Provider submits a copy of the Environmental document and all required environmental permits to UDOT. Provider is responsible for complying with all environmental requirements as outlined in:

(A) UDOT's Metric Specifications For Road and Bridge Construction CSI Format, Section 01355 Environmental Protection.

(B) Letter dated October 9, 1997 issued by UDOT's Deputy Director. (Appendix E).

The review and approval of the Environmental Document by UDOT does not relieve the Provider from any liability due to errors or omissions in the Document.

(iii) Except in emergency situations as provided in Section IX.8.A of this manual, UDOT does not allow any Provider or person to dig up, disturb, or alter the land surface or the roadway surface within the right-of-way of any Interstate Highway under any License Agreement until Provider or person first obtains a written permit from UDOT.

(iv) Permits contain reasonable terms and conditions pertaining to crossing, excavating, placing, constructing, and maintaining conduits, facilities, or any other structures or objects on rights-of-way.

(v) For each permit issued, UDOT recovers the cost of the plan reviews.

(e) UDOT requires both a Payment Bond and a Performance Bond from the Provider at the time of the execution of the permit, and determines the amount of the bonds at the time the permit is issued.

(i) Bonds run for three (3) years after completion of the work to guarantee satisfactory performance. The Provider's liability is not limited to the amount of the bonds.

(ii) UDOT may proceed against the Performance Bond to recover all expenses incurred by UDOT, its employees or representatives, in bringing the section of Interstate right-of-way interfered with to required standards.

(iii) UDOT may proceed against the Payment Bond to recover all expenses incurred by UDOT for plan review, permit issuance, and inspection costs.

(f) The Provider may not begin excavations and/or other operations on UDOT property or right-of-way until the Provider gives notice to UDOT and obtains a permit. The Provider completes the construction in accordance with approved plans.

(g) The Provider completes work covered by the permit as specified in the license agreement.

(i) Failure to complete the work within the specified time gives UDOT the option of extending the time or revoking the permit and using the bond to restore UDOT's right-of-way to its original condition.

(ii) Time extensions shall be in writing and approved by UDOT.

(h) UDOT retains the right to cancel the permit and remove the facility and restore the Interstate right-of-way at the sole expense of the Provider,

(i) If the Provider fails to:

(A) Construct, maintain or remove said telecommunication facility in accordance with the terms of the permit to the entire satisfaction of UDOT, or

(B) Pay UDOT any sum of money for the inspection, or reconstruction of UDOT's right-of-way to its original condition.

(ii) Before UDOT cancels the permit, it notifies the Provider in writing, discloses violations, and gives the Provider a reasonable time to make full corrections.

(3) Right-of-Way Use Conditions and Requirements

The following provisions apply to all telecommunication facilities:

(a) Do not transfer permitted interest to another Provider or person except by written consent of UDOT.

(b) Providers to whom permits may be granted:

(i) 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, operation, or use of their facilities.

(ii) Shall be responsible for maintaining the excavation for a period of three years in accordance with applicable specifications for excavations on Interstate highway rights-of-way.

(c) UDOT and Provider shall comply with Utah Code 54-8a before beginning any excavations.

(d) UDOT may require the Provider to relocate the telecommunication facilities located on any Interstate right-of-way when highway changes are required to provide for the free and safe flow of traffic.

(4) Telecommunication Facility Installation Requirements

(a) Provider shall locate telecommunication facilities to:

(i) Eliminate or minimize need for later adjustment to accommodate future highway improvements, and;

(ii) Permit access for servicing with minimum interference to highway traffic.

(b) Locate longitudinal telecommunication facility installations on a uniform alignment no closer than 0.91 meters (3 feet) from the right-of-way fence at a location approved by UDOT to provide a safe environment for traffic operation, and preserve space for future highway improvements or other telecommunication facility provider installations.

(c) Place by boring, new transverse telecommunication facility installations permitted under highways. Open excavation is not allowed under the Interstate pavement or within the Interstate clear zone.

(d) To the extent feasible and practical, place telecommunication facility highway crossings on a line generally 90 degrees to the highway alignment.

(e) Place the horizontal and vertical location of above ground telecommunication facilities within the highway right-of-way limits to conform with the clear zone policies as defined in the most current edition of the AASHTO "Roadside Design Guide."

(f) Keep on file and make available to UDOT upon request, reproducible plans (including electronic plans) showing the location of the telecommunication facilities.

(i) Electronic as-build plans available within 60 days of completion of installation.

(ii) Redline drawings available immediately upon completion of installation at the request of UDOT.

(iii) Files must be in format compatible with Intergraph and Microstation in accordance with UDOT CADD standards.

(iv) The Provider maintains plans and electronic files updated with horizontal and vertical ties to the center line of the highway, so that the exact location of the facility may be established as the need arises.

(g) In general, apply controls previously outlined for pipelines as related to burial depth, encasement, and installation to underground installations of communication lines. Conform to Section V.D.2.a. Other controls are as follow:

Provide loops which will allow placement of above ground appurtenances such as splice box closures, underground distribution terminals, etc., as close to the highway right-of-way as is possible, or outside of the right-of-way on private right-of-way as determined by a UDOT authorized representative.

(5) Design

(a) The Provider is responsible for the design of the facility to be installed within the highway rights-of-way. UDOT is responsible for reviewing and accepting the Provider's proposal, particularly the installation method used including the measures to preserve the safe and free flow of traffic, structural integrity of the highway, ease of highway maintenance, and appearance of the highway.

(b) Provider designs distribution or service line crossings of Interstate highways such that the need for crossings by telecommunication service connections is minimized.

(c) As a minimum, meet the requirements of the most current edition of the National Electrical Safety Code for all telecommunication facility installations on, over, or under the UDOT rights-of-way.

(d) Design ground-mounted telecommunication facilities to be compatible with the scenic quality of the specific Interstate highway section in question.

(e) Design all telecommunication facilities on, over, or under on highway right-of-way of durable materials and for long service life expectancy reasonably free from servicing and maintenance.

(f) On new installations or adjustments of existing telecommunication facilities, make known any provisions for planned expansion of the facilities. Plan to avoid interference when additional underground lines are installed at some future date.

6.Appurtenances

(a) The Provider is required to install readily identifiable and suitable markers at 500 foot intervals or line of sight as near as practical to UDOT's right-of-way line.

(b) Do not locate handholes in the pavement or shoulders of Interstate highways, unless approved by UDOT. Design and locate handholes to cause the least interference to other utilities and future highway expansion. Provider bears the cost of adjusting handholes to fit new or reconstructed highway paving, grading or slope flattening.

(7) Costs

(a) On new installations, the Provider pays for the entire costs of the telecommunication facility. If a highway is reconstructed requiring adjustment of handholes or relocation of the telecommunication facility on the right-of-way, the telecommuni-cation facility provider assumes and pays all costs incident to adjusting handholes or relocating any part of the telecommunication facility.

(8) Excavation and Backfill

(a) Conduct all excavation and backfill to comply with UDOT's current edition of Metric Specifications For Road and Bridge Construction CSI Format Section 02316 Roadway Excavation, Section 03575 Flowable Fill, and Section 02317, Subsection 3.3 Backfill and Compaction (see Appendix B).

(i) Do not excavate without first obtaining and posting the required permit.

(ii) An emergency excavation may be made without prior permit if there is imminent danger or loss of life or severe damage to property.

(iii) In emergency situations, contact UDOT not later than the end of the first working day following the excavation.

(iv) No provision of this manual is waived for emergency situations except for the prior permit requirement.

(v) In all cases, the permittee complies with the State Law requiring notification of all utilities owners prior to excavation.

(9) Traffic Control

(a) Conduct operations to minimize interruption to highway traffic.

(i) Conform to the instructions of UDOT representatives, and maintain flaggers, watch persons, barricades, lights, and other measures in conformance with the current Federal Highway Administration's "Manual on Uniform Traffic Control Devices" (MUTCD) during maintenance and construction.

(ii) Do not close lanes or shoulders without prior written approval from UDOT. Traffic control plans showing detours and signing operations are required in advance for review and approval. Peak hour lane closures are prohibited.

(10) Restoration of Traffic Signal and Advance Traffic Management system (ATMS) Equipment

(a) Restore any traffic signal equipment or any facilities which are disturbed or relocated as a result of the telecommunication provider work in accordance with plans approved by UDOT.

(i) At the Provider's expense by a qualified electrical contractor experienced in signal installation, retained by the permittee and approved in advance by UDOT.

(ii) Schedule work to minimize disruption of any traffic signal operation.

(11) Cleaning Highway Right-of-Way

(a) Upon completion of the work, remove all material from within the limits of the highway. Carefully grade the disturbed surface to the lines and grades existing prior to the excavation. Seeding and/or replacing sod and/or plants may be required to restore damaged or destroyed vegetation. Accomplish all seeding and replacing activities following UDOT's Metric Standard Specifications For Road and Bridge Construction CSI Format, Section 02922 Seed, Turf seed, and Turf Sod, and Section 02936 Vegetation Establishment Period.

(b) Properly restore any highway features or facilities

such as paint striping, signs, culverts, etc., disturbed or damaged during the progress of the work to satisfy UDOT current standards and regulations.

(12) Maintenance

(a) At all times maintain, repair, renew, and operate the telecommunication facility at the Provider's expense.

(i) If the telecommunication facility interferes with the operation of the highway, UDOT will notify the telecommunication provider in writing or verbally setting forth the violations and will request that the problem be corrected.

(ii) If the telecommunication provider does not correct the problem, UDOT reserves the right, without relieving the telecommunication provider of their obligation, to reconstruct or make emergency repairs to the telecommunication facility as it may consider necessary at the expense of the telecommunication provider.

(13) As a condition of being given a permit for a new telecommunication facility, the Provider grants UDOT the perpetual right to cross the telecommunication facility and all associated property if UDOT needs to do so for construction, expansion, improvement or maintenance of the highway system. UDOT shall use due care in crossing the telecommunication facility.

14. Liability

The Provider shall indemnify UDOT, its officers, employees, and agents, and hold them harmless for any and all claims, including claims from third parties, arising out of the construction or use of the telecommunication facility, and from all costs or expenses, including attorneys' fees of preparing for and defending against that claim.

(15) UDOT Maintenance Operations

(a) Bury underground facilities to the minimum depth of 60 inches when located within 20 feet of the edge of pavement and 36 inches on all other locations. Obtain approval from UDOT for any deviations in depth.

(i) In entering into the License Agreement with UDOT and obtaining an encroachment permit for the work, the Provider is required to avoid conflicts by placing its facilities to the required horizontal clearance and minimum burial depth.

(ii) The Provider is required by the terms of the permit to protect, indemnify and hold UDOT harmless for damages to lines within the right-of-way, which are not in compliance with the horizontal and vertical clearances. Any noncompliance to the above may result in annulment of the Provider's agreement or permit.

(16) Overhead Telecommunication Lines

(a) Avoid the following except where the Executive Director or his or her designee finds hardship or impracticality:

(i) Above-ground installations

(ii) Huts, pedestals, boxes, or other equipment and devices within the highway right-of-way

(iii) Use of through traffic roadways, lanes and ramps for construction or maintenance activities

(17) Installation on Highway Structures

(a) Attaching telecommunication facility provider lines to a highway structure can materially affect the safe operation of traffic and the efficiency of maintenance.

(b) Telecommunication facility may not be permitted to be installed on bridges, except in extreme cases where it is shown that any other location is extremely difficult.

(i) The location and design of telecommunication facility installation on bridges is subject to review and approval or denial by UDOT. UDOT must accept before the Provider proceeds.

(ii) Does not apply to telecommunication facilities required for operating the highway.

(c) Do not consider attachment of a telecommunication facility unless the structure is of a design that is adequate to support the additional load and can accommodate the telecommunication facility without compromise of Interstate highway features.

(d) Handholes for telecommunication provider access are not allowed in a bridge deck.

(e) Mount the entire telecommunication facility installation on the structure so as not to reduce the vertical clearance otherwise available.

(f) Locate telecommunication facilities which will be positioned beneath the structure floor preferably:

(i) Between the outer girders or beams

(ii) Or within a cell and at an elevation above the lowest superstructure steel or masonry.

(g) Attachments of telecommunication facilities to the outside of a structure is not permitted unless there is no reasonable alternative.

(h) Install telecommunication facility mountings which will not rattle due to vibrations caused by traffic.

(i) Suitably insulate and ground communication line attachments, and preferably carry them in protective conduit or pipe from the point of exit from the ground to reentry.

(ii) Preferably carry the cable to a handhole located beyond the backwall of the structure.

(iii) Suitably insulate carrier pipe and casing pipe from electrical power line attachments.

(i) Acceptable telecommunication facility attachment methods are hangers and/or roller assemblies suspended either from inserts from the underside of the bridge floor or from the hanger rods clamped to the flange of some superstructure member. Bolting through the bridge floor is not permitted.

(j) Clearances of the telecommunication facility from structure members:

(i) Conform to all governing codes.

(ii) Do not render any portion of the structure inaccessible for any maintenance function.

(k) Provider makes satisfactory provisions for the lineal expansion and contraction of its facility due to temperature variations.

(L) The Provider is responsible for restoration or repair of any portion of a structure or highway damaged by telecommunication facility use.

(18) Telecommunication Facility Locations Within Scenic Enhancement Areas

New underground telecommunication facility provider installations may be permitted within such areas where they do not require extensive removal or alteration of trees visible

to the highway user or do not impair the appearance of the area.

(19) Miscellaneous

(a) Minimize the size of a disturbed area. Use construction methods in accordance with UDOT specifications and in compliance with the conditions of the License Agreements and permits. Promptly repair unsatisfactory restoration work.

(b) The telecommunication provider is required to obtain written permission from UDOT before disturbing trees which are located within the Interstate right-of-way. When the removal of a tree is permitted, remove the stump and properly backfill the hole. UDOT may require replacement with several trees as appropriate and approved by UDOT to assure equal restoration and mitigation.

(c) Keep all telecommunication facilities in a good state of repair both structurally and in appearance.

KEY: utility rules

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	72-7-108