

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 18, 2004, 12:00 a.m., and March 1, 2004, 11:59 p.m. are included in this, the March 15, 2004, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least April 14, 2004. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through July 13, 2004, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Commerce, Occupational and
Professional Licensing
R156-68
Utah Osteopathic Medical Practice Act
Rules

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 26956
FILED: 02/24/2004, 11:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The definition of AAPS (American Association of Physician Specialists) needs to be clarified in the rule and added as an acceptable medical specialty certification. The AAPS was formed as a means of certifying osteopathic physicians/surgeons that had done MD (physician/surgeon) residency training in the 1950s. At that time, the AOA (American Osteopathic Association) would not certify the osteopathic physician/surgeon because they did not do an osteopathic residency and the AMA (American Medical Association) would not recognize the osteopathic physician degree. In February 2002, the Florida Medical Board and in June 2002, the Florida Osteopathic Board concluded that AAPS certification boards were equivalent in their history, eligibility requirement, and examination process to AOA and ABMS (American Board of Medical Specialties) boards and should be recognized as equivalent. Since then the Oklahoma Board of Osteopathic Examiners and the Kentucky Board of Emergency Medical Services have accepted AAPS certification. Every major insurance carrier in Utah, with the exception of IHC, accepts AAPS certification.

SUMMARY OF THE RULE OR CHANGE: In Section R156-68-102, added "AAPS" and renumbered the remaining paragraphs. In Subsection R156-68-302b(3), added "AAPS" as an acceptable medical specialty certification. In Section R156-68-603, corrected rule citation reference from Subsection R156-68-102(2) to Subsection R156-68-102(4).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-68-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division will incur minimal costs, approximately \$75, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ❖ LOCAL GOVERNMENTS: This proposed amendments does not apply to local governments. Therefore, there is no cost or savings to local government anticipated.
- ❖ OTHER PERSONS: Only applicants for licensure as an osteopathic physician/surgeon will be affected by the proposed amendments. No exact costs or savings are known; however, the proposed amendments would be favorable for those applicants who hold a current certification issued by the

AAPS in that they would not have to obtain either an AOA or ABMS specialty board certification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Only applicants for licensure as an osteopathic physician/surgeon will be affected by the proposed amendments. No exact costs or savings are known; however, the proposed amendments would be favorable for those applicants who hold a current certification issued by the AAPS in that they would not have to obtain either an AOA or ABMS specialty board certification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing, which merely amends a reference to the certifying body for doctors of osteopathy not previously recognized by the American Osteopathic Association or the American Board of Medical Specialties. Klarice A. Bachman, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rules.
R156-68-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or these rules:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.
([2]3) "ACCME" means Accreditation Council for Continuing Medical Education.

([3]4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient

than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(~~4~~5) "AMA" means the American Medical Association.

(~~5~~6) "AOA" means American Osteopathic Association.

(~~6~~7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(~~7~~8) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(~~8~~9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(~~9~~10) "FSMB" means the Federation of State Medical Boards.

(~~10~~11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(~~11~~12) "LMCC" means the Licentiate of the Medical Council of Canada.

(~~12~~13) "NBME" means the National Board of Medical Examiners.

(~~13~~14) "NBOME" means the National Board of Osteopathic Medical Examiners.

(~~14~~15) "NPDB" means the National Practitioner Data Bank.

(~~15~~16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-68-502.

(~~16~~17) "USMLE" means the United States Medical Licensing Examination.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III; or

(b) the NBOME parts I, II and the NBOME COMPLEX Level III; or

(c) the NBOME part I and the NBOME COMPLEX Level II and III; or

(d) the NBOME COMPLEX Level I, II and III; or

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component; or

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part; or

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step; or

(h) the LMCC examination, Parts 1 and 2; or

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part II or the USMLE step 3; or

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(2) In accordance with Subsection 58-68-302(2)(c), the passing score on the SPEX examination is at least a score of 75.

(3) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ~~or~~ ABMS, or AAPS member specialty board.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(~~2~~4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: osteopaths, licensing, osteopathic physician^[*]

~~July 5, 2004~~2004

Notice of Continuation June 2, 2003

58-1-106(1)(a)

58-1-202(1)(a)

58-68-101



Education, Administration
R277-444
 Distribution of Funds to Arts and
 Sciences Organizations

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 26979
 FILED: 03/01/2004, 20:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to eliminate Subsection R277-444-3(B) that is no longer necessary at this time, to clarify definitions of arts and science organizations, and appropriately reorganize the language of the rule. This rule will need to be amended again based on changes made during the 2004 Legislative General Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule clarify definitions, and change eligibility, application and funding to be consistent with state law and intent.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. The amendments simply change the procedures for distribution of funds to arts and science organizations.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. There is no significant costs or savings in receiving money through the previous Request for Proposals (RFP) process or through the process directed by the 2003 Legislature.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. The funds are provided to organizations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The funds are provided to organizations.

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

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-444. Distribution of Funds to Arts and Sciences Organizations.

R277-444-1. Definitions.

A. "Arts organization (organization)" means a non-profit professional artistic organization that provides artistic (dance, music, drama, art) services, performances or instruction to the Utah community.

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

C. "Hands-on activities" means activities that include active involvement of students with presenters, ideally with materials provided by the organization.

D. "Non-profit organization" means an organization no part of the income of which is distributable to its members, directors or officers; a corporation organized for other than profit-making purposes.

E. "Request for proposal (RFP)" means a competitive application process used to identify programs that best meet requirements established by the Board.

F. "School visits" means performances, lecture demonstrations/presentations, in-depth instructional workshops, residencies, side-by-side mentoring, and exhibit tours by professional arts and science groups in the community.

G. "Science organization (organization)" means a non-profit professional science organization that provides science-related services, performances or instruction to the Utah community.

H. "State Core Curriculum" means those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

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

R277-444-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria for the distribution of funds appropriated by the Utah Legislature to enhance the State Core Curriculum through school visits.

R277-444-3. Eligibility of Organizations.

~~[A.]~~ Scientists, artists, or entities hired/sponsored for services in the schools, directly or indirectly through coordinating organizations, ~~[are always]~~ shall be subject to the same review and approval process.

~~B. For FY 2002-2003, only line item organizations identified in S.B. 1, Appropriations Act, from the 2002 General Session, shall be eligible for funding as directed by the Legislature.]~~

R277-444-4. Applications and Funding.

A. Applications shall be provided by the USOE.

B. Organizations funded through an RFP process at the direction of the Legislature shall submit applications to the USOE Fine Arts and Science Specialist[s ~~who shall make final funding recommendations to the USOE Finance Committee by August 31 of the school year in which the money is available~~].

C. Every four years, beginning in July 1998, all line item organizations shall reapply to the USOE to reestablish their line item status and amount of funding.

D. The USOE may require additional evaluation or audit procedures from organizations to demonstrate use of funds consistent with the law and this rule.

R277-444-5. Accountability.

A. Organizations may be visited by USOE staff prior to funding or at school presentations during the funding cycle to evaluate the effectiveness and preparation of the organization.

B. Organizations that receive arts/science funding shall submit an annual evaluation report to the USOE by July 1 [~~of the fiscal year in which the award was made~~].

C. The year-end report shall include:

(1) a budget expenditure report and income source report using a form provided by the USOE;

(2) a narrative description of all services provided by the organization;

(3) documentation of collaboration in planning content related to the State Core Curriculum and visit preparation/follow up with the USOE and school communities;

(4) documentation that all school districts and schools have been offered opportunities for participation with the [~~arts/science~~] organization over a three year period to the extent practicable.

(5) copies of any and all materials developed, as requested;

(6) record of the dates and places of all services rendered, the number of instruction/performance hours per district and school, and the number of students and teachers served; and

(7) examples of individual and overall program impact on school science or art programs or curricula.

(8) a report and accounting of fees charged, if any, to recipient schools, districts, or organizations.

D. The USOE may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules. [

~~— E. Every four years, beginning in July 1998, all line item organizations shall reapply under the USOE RFP process to reestablish their line item status for funding consistent with funds received the previous year.~~

~~— F. The USOE may require additional evaluation or audit procedures from arts/science organizations to demonstrate use of funds consistent with the law and this rule.]~~

R277-444-6. Variations or Waivers.

A. No deviations from the approved and funded proposal shall be permitted without prior approval from the appropriate USOE specialist or his designee.

B. The USOE may require requests for variations to be submitted in writing.

C. The nature and justification for any deviation or variation from the approved proposal shall be reported in the year-end report.

D. Any variation shall be consistent with law and the purposes of this rule.

KEY: arts, science, curricula

[October 16, 2002]2004

Notice of Continuation October 13, 2000

Art X Sec 3

53A-1-401(3)



Education, Administration **R277-501** Educator Licensing Renewal

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26980

FILED: 03/01/2004, 20:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for specific amounts and types of professional development requirements for highly qualified teachers under federal law and state direction for improving the training of teachers.

SUMMARY OF THE RULE OR CHANGE: The amendments provide new definitions, provide clearer standards for Secondary, Elementary and Early Childhood qualifications, eliminates outdated provisions, and provides additional miscellaneous renewal information.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-6-104

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget. We expect that increased costs related to the services and requirements of this rule will be funded by increased licensing fees and/or appropriation by the Utah State Legislature.

❖ **LOCAL GOVERNMENTS:** If school districts provide professional development and license renewal opportunities, there may be some associated costs. Some of those costs should be absorbed by existing budget--others may be funded by the Utah State Legislature. Professional development or licensing opportunities may cost significantly different amounts.

❖ **OTHER PERSONS:** There may be costs to other persons earning professional development points or seeking license renewal. It is expected that the costs to individuals need not exceed \$200 in each 5-year renewal period. However, these costs may depend upon the educator's assignment, previous experience in education, and the educator's own preferences.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be costs for affected persons earning professional development points or seeking license renewal. The costs may be minimal or educator's may choose to take more costly courses or opportunities.

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

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-501. Educator Licensing Renewal.

R277-501-1. Definitions.

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Active educator" means an individual holding a valid license issued by the Board who is employed by a unit of the public education system or an accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle.

C. "Active educator license" means a license that is currently valid for service in a position requiring a license.

D. "Approved Inservice" means training, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

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

F. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

G. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

[G]H. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved inservice, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, and certificates shall be maintained by the educator in the educator's Utah Educator License Renewal Folder;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

[H]I. "Educational research" means conducting educational research or investigating education innovations.

J. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

K. "HOUSSE" means high, objective, uniform state standard of evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

[L]L. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a unit of the public education system or an accredited private school in a role covered by the license for less than three years in the individual's renewal period.

[M]M. "Inactive educator license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

[N]N. "Level 1 license" means a license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

[O]O. "Level 2 license" means a license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule; and

(2) three years of successful education experience within a five-year period.

[P]P. "Level 3 license" means a license issued to an educator who holds a current Utah Level 2 license and has also received National Board [e]Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

[Q]Q. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

R. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification. NASDTEC maintains an Educator Information Clearinghouse for its members regarding persons whose licenses have been suspended or revoked.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "NCATE" means the National Council for Accreditation of Teacher Education, that has established standards for teacher education programs and holds accredited institutions accountable for meeting these standards.

[O]. "One half time contract position" means less than full time (minimum hours defined by district contract) but at least one half time (minimum hours defined by district contract) employment as an educator in a unit of the public education system or an accredited

~~private school for one school year, or full time for at least one half of the school year.~~

~~P. "Professional activities in an educational institution" means active participation in an educational institution consistent with the standards of this rule.~~

~~Q]U. "Professional development plan" means a document prepared by the educator consistent with this rule.~~

~~R]V. "Professional development [~~or license~~]points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.~~

~~S]W. "Utah Educator License Renewal Folder" means the folder provided by the USOE or school districts for educators to collect and track professional activities for purposes of license renewal. The Utah Educator [~~U~~]License [~~R~~]Renewal [~~F~~]Folder may also be developed by an educator upon his own initiative and in an individual format, but shall include adequate documentation of participation in activities approved under this rule.~~

~~F]X. "USOE" means the Utah State Office of Education.~~

~~H]Y. "Verification of employment" means official documentation of employment as an educator.~~

R277-501-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

R277-501-3. Categories of Acceptable Activities for a Licensed Educator.

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Inservice:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled inservice, or

(b) a request submitted through the computerized inservice program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled inservice.

(3) Each clock hour of authorized inservice time equals one professional development point.

(4) The inservice shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation.

D. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

(2) One license point is awarded for each clock hour of participation.

(3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.

E. Service in a leadership role in a national, state-wide or district recognized professional education organization:

(1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.

(2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.

F. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities include conducting educational research or investigating educational innovations.

(2) This research activity shall follow school and district policy.

(3) An inactive educator may conduct research and receive professional development [~~credit~~]points on programs or issues approved by a practicing administrator.

(4) One license point is awarded for each clock hour of participation.

G. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educator's principal/supervisor.

(3) One license point is awarded for each clock hour of participation.

H. Substituting in a unit of the public education system or an accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501B and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn a maximum of 50 professional development points during the renewal period as a substitute.

I. Up to 50 license points may be earned in any one or any combination of categories D, F and G above.

R277-501-4. NCLB Highly Qualified - Secondary.

In order to meet the federal requirements under a Highly Objective Uniform Statewide System of Evaluation (HOUSSE), a secondary educator shall have a bachelor's degree, an educator

license and one of the following for each of the teacher's NCLB Core academic subject assignments:

A. a University major degree or National Board Certification;
or

B. documentation that the teacher has passed, at a level designated by the USOE, an appropriate USOE-approved subject area test(s); or

C. an endorsement in a subject area directly related to the educator's academic major; or

D. documentation of coursework equivalent to a major degree (30 semester or 45 quarter hours); or

E. documentation of satisfaction of Utah's HOUSSE requirements for assignments not directly related to the educator's academic major:

(1) a current endorsement for the assignment; and

(2) completion of 200 professional development points directly related to the area in which the teacher seeks to meet the federal standard under R277-501(3) as applicable. (No more than 100 points may be earned for successful teaching in related area(s)); and

(3) points and documentation are required for teachers of all NCLB content courses prior to June 30, 2006; and

(4) documentation includes official transcripts, annual teaching evaluation(s), data of adequate student achievement.

R277-501-5. NCLB Highly Qualified - Elementary and Early Childhood.

A. In order to meet the federal requirements under a Highly Objective Uniform Statewide System of Evaluation (HOUSSE), an elementary/early childhood educator shall satisfy R277-501-5A (1) and (2) and (3)(a) or (b), and B or C as provided below:

(1) the educator has a current Utah educator license; and

(2) the educator is assigned consistent with the teacher's current state educator license; and

(3) the educator shall:

(a) have completed an elementary or early childhood major or both from an accredited college or university; or

(b) the teacher's employer may review the teacher's college/university transcripts and subsequent professional development to document that the following have been satisfied with academic grades of C or better:

(i) nine semester hours of language arts/reading or the equivalent; and

(ii) six semester hours of physical/biological science or the equivalent; and

(iii) nine semester hours of social sciences or the equivalent; and

(iv) three semester hours of the arts or the equivalent; and

(v) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

(vi) six semester hours of elementary/early childhood methodology (block); and

B. the educator has obtained a Level 2 license; or

C. An elementary/early childhood teacher shall pass Board-approved content test(s).

R277-501-[4]6. Required Renewal License Points for Designated License Holders.

A. Level 1 license holder with no licensed educator experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

B. Level 1 license holder with one year licensed educator experience within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) any years taught shall have satisfactory evaluation(s).

C. Level 1 license holder with two years licensed educator experience within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

D. Level 1 license holder with three years licensed educator experience within a three year period.

(1) An active educator shall earn at least 25 professional development points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

E. An educator seeking a Level 2 license shall notify the USOE of completion of Level 2 license prerequisites consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and R277-502, Educator Licensing and Data Retention.

[D]E. Level 2 license holder:

(1) An active educator shall earn at least 100 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

[E]G. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree in education or in a field related to a content area in a unit of the public education system or an accredited private school shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

H. Teachers seeking license renewal who do not meet NCLB standards shall focus 100 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major or major equivalent.

R277-501-[5]7. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.

A. Level 2 active educators:

~~[(1) A licensed educator whose license expires June 30, 2001 shall earn 20 license points between July 1, 1999 and June 30, 2001 and shall provide verification of employment.~~

~~—(2) A licensed educator whose license expires June 30, 2002 shall earn 40 license points between July 1, 1999 and June 30, 2002 and shall provide verification of employment.~~

~~—(3) A licensed educator whose license expires June 30, 2003 shall earn 60 license points between July 1, 1999 and June 30, 2003 and shall provide verification of employment.]~~

[(4)] A licensed educator whose license expires June 30, 2004 shall earn 80 license points between July 1, 1999 and June 30, 2004 and shall provide verification of employment.

[(5)] A licensed educator whose license expires June 30, 2005 shall earn 100 license points between July 1, 1999 and June 30, 2005 and shall provide verification of employment.

B. Level 2 inactive educators:

~~[(1) A licensed educator whose license expires on June 30, 2001 shall earn 100 license points between July 1, 1999 and June 30, 2001. License holders may receive credit for university/in-service courses taken no more than five years prior to July 1, 1999 under R277-501-6(1).~~

~~—(2) A licensed educator whose license expires on June 30, 2002 shall earn 100 license points between July 1, 1999 and June 30, 2002. License holders may receive credit for university/in-service courses taken no more than five years prior to July 1, 1999 under R277-501-6(1).~~

~~—(3) A licensed educator whose license expires on June 30, 2003 shall earn 120 license points between July 1, 1999 and June 30, 2003.]~~

[(4)] A licensed educator whose license expires on June 30, 2004 shall earn ~~[40]~~180 license points between July 1, 1999 and June 30, 2004.

[(5)] A licensed educator whose license expires ~~on~~ after June 30, 200~~4~~ shall earn 200 license points ~~[between July 1, 1999 and June 30, 2005]~~ during the renewal period.

R277-501-~~[6]~~8. Miscellaneous Renewal Information.

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with federal and state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor.

(6) If an educator is not employed in education at the renewal date, the educator shall:

(a) review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form, or

(b) review the professional development plan and personally sign the verification form.

B. Each Utah license holder shall be responsible for maintaining a professional development folder.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development folder shall be retained by the educator for a minimum of two renewal cycles.

C. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84111~~[4-4200]~~ between January 1 and June 30 of the renewal year.

(1) Forms that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or the Utah [e]Educator [en] or [f] License [f] Renewal [f] Folder[s] upon request.

D. License holders may begin to acquire professional development points under this rule as of July 1, 1999.

E. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

F. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development [credit] points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

G. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall not be charged a renewal fee.

H. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

I. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999, the effective date of R277-521.

(2) All specialists shall be considered Level 1 license holders.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

J. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:

(1) satisfactory completion of the educator's employing school district's district-specific professional development plan; and

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

K. Completion of relicensure requirements by an educator under R277-501-6 or R277-501-8J, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

KEY: educational program evaluations, educator license renewal^[#]
[May 16, 2000]2004
 Art X Sec 3
 53A-6-104
 53A-1-401(3)

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

Education, Administration

R277-514

Board Procedures: Sanctions for Educator Misconduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26981

FILED: 03/01/2004, 20:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to eliminate provisions regarding the Licensure Committee and to make the rule consistent with current practice.

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule eliminate the Licensure Committee in the definitions, change and simplify Board procedures, and clarify language regarding notification requirements and procedures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Section 53A-6-307

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. The amendments to procedures have no associated costs.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The amendments to the rule apply only to the Utah State Board of Education and not to schools/school districts.
- ❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. The amendments to the rule apply only to the Utah State Board of Education and not to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments streamline the procedures and reflect current practice.

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

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or

R277. Education, Administration.

R277-514. Board Procedures: Sanctions for Educator Misconduct.

R277-514-1. Definitions.

In addition to terms defined in Section 53A-6-103, the following definitions apply:

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of an ~~claim~~ allegation of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

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

C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

D. ~~"Licensure Committee" means a committee of the Board which reviews issues relating to licensure of educators.~~

~~E.~~ "Commission" means the Utah Professional Practices Advisory Commission.

~~F]~~E. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

~~G]~~E. "Party" means the complainant or the respondent.

~~H]~~G. "Recommended disposition" means a recommendation for resolution of a complaint.

~~I]~~H. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail to the individual's last known address or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

~~J]~~I. "Superintendent" means the State Superintendent of Public Instruction.

R277-514-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in

which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide an appeals process for recommendations and decisions made by [UPPAC]the Commission, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator's license for misconduct.

R277-514-3. Administrative Review by Superintendent.

A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:

(1) suspension of an educator's license for two years or more, or

(2) revocation of an educator's license,

B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.

C. The request for review shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

D. If the Superintendent finds:

(1) that procedural errors have occurred which may have violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or not the findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or ~~that the recommended disposition presents a reasonable resolution of the case~~ direct the Executive Secretary for the Commission to take specific administrative action. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board, if necessary, for final disposition consistent with this rule.

R277-514-4. ~~Licensure Committee~~Board Procedures.

A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary ~~[of the Professional Practices Advisory]~~ for the Commission for action under R686-100.

B. ~~[A case referred to the Board by the Commission, following review by the Superintendent, or upon appeal under R686-100-17C, shall be assigned to the Licensure Committee]~~ Following completion of procedures provided in R686-100, if the Commission recommends that an educator's license be suspended for any period of time or revoked, the recommendation shall be forwarded to the Board for action.

C. ~~[The Licensure Committee shall review the case file and the recommendation of the Commission. If the Licensure Committee finds that there have not been serious procedural errors on the part of the Commission, that the findings and conclusions of the Commission are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Licensure Committee shall approve the Commission's action and forward the case to the full Board for its consideration.~~

~~— D. If the Licensure Committee finds that there is insufficient information in the case file to complete its work, the Licensure~~

~~Committee may direct the parties to appear and present additional evidence or clarification.~~

~~— E. If the Licensure Committee finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Licensure Committee shall refer the case back to the Commission to correct the errors.~~

~~— F. If the Licensure Committee determines that the findings or conclusions of the Commission are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Licensure Committee may refer the case back to the Commission for further action or may, in the alternative, prepare its own findings, conclusions, or recommended disposition.~~

~~— G. If the Licensure Committee prepares its own findings, conclusions, or recommendation, then the Licensure Committee shall forward its findings, conclusions, or recommendation to the Board together with the file as received from the Commission.~~

R277-514-5. Board Procedures.

~~— A. —~~ Upon receiving a case from the ~~[Licensure Committee]~~ Commission, the members of the Board shall review a summary of the case and may:

(1) accept the recommendation of the ~~[Licensure Committee]~~ Commission; or ~~[may]~~

(2) review the case file, findings, conclusions, and recommended disposition of the case.

(a) If the Board finds ~~[that there have not been]~~ no serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.

~~[B-](b)~~ If the Board finds ~~[that]~~ serious procedural errors ~~[have occurred which]~~ have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.

~~[C-](c)~~ If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.

~~[D-](d)~~ If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.

~~[E-](e)~~ If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.

~~[F-]D.~~ The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.

~~[G-]E.~~ All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.

~~[H-]F.~~ The decision of the Board is final.

R277-514-[6]5. Notification Requirements and Procedures.

A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school

employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.

B. A local superintendent shall notify the Commission if an educator is ~~found~~determined, pursuant to an administrative or judicial action, to ~~be guilty~~have had disciplinary action taken for or to be guilty of:

(1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or

(2) immoral behavior.

C. Failure of an educator to comply with Subsection A or B may constitute[s] unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator ~~has~~is surrender~~ed~~s a license or allow~~ed~~s it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

KEY: disciplinary actions, professional competency, ~~teacher~~educator licensure~~is~~^z
~~April 3, 2000~~2004
 Notice of Continuation September 12, 2002
 Art X Sec 3
 53A-6-405
 53A-6-307
 53A-1-401(3)

▼ ————— ▼

Education, Administration **R277-725** Electronic High School

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 26982
 FILED: 03/01/2004, 20:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is established to satisfy statutory language that requires the State Board of Education to provide a rule for distribution of funds for the Electronic High School program.

SUMMARY OF THE RULE OR CHANGE: The rule provides definitions, procedures for Electronic High School funding, courses and credits, criteria for student eligibility, Electronic High School services to student with disabilities, student fees and tuition, and teacher requirements and payments.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-17a-131.15

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. The Utah State Legislature provides

funding to the Utah State Office of Education to administer the Electronic High School program and the USOE operates within the budget.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The Electronic High School program is administered by the Utah State Office of Education.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. Enrollment in Electronic High School courses is free to Utah residents. There may be incidental costs for books, software, etc.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The Legislature provides funding to the Utah State Office of Education to administer the Electronic High School program and courses are free to Utah residents.

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

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-725. Electronic High School.

R277-725-1. Definitions.

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

B. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

C. "Open entry/open exit" means:

(1) a method of instructional delivery that allows for flexible scheduling in response to individual student needs or requirements and demonstrated competency when knowledge and skills have been mastered; and

(2) students have the flexibility to begin or end study at any time, progress through course material at their own pace, and

demonstrate competency when knowledge and skills have been mastered.

D. "Unit of credit" means credit awarded for courses taken with school district/school approval and successfully completed by students. A student may also earn units of credit by demonstrating subject mastery through district/school approved methods.

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

R277-725-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of the public schools in the Board, Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-131.15 which directs the Board to have a rule for distribution of funds for the electronic high school program.

B. The purpose of this rule is to provide minimum standards, definitions, and procedures for distribution of funds and coordination of the electronic high school program.

R277-725-3. Electronic High School Funding.

A. Funds appropriated by the Legislature for the electronic high school program shall be distributed by the Utah State Office of Education.

B. The Utah State Office of Education may designate a fiscal agent to pay teachers' salaries, course development fees, software licensing fees, and accreditation dues.

R277-725-4. Courses and Credit

A. Curriculum, course offerings and course availability shall be determined by the USOE Electronic High School Principal following consultation with school district personnel and USOE specialists to determine demand and curriculum requirements.

B. Courses shall be offered in an open-entry open-exit format.

C. Courses shall be designed to be competency-based, with no specific student seat time requirement. (Historically, the average course takes the average student 175 to 200 hours to successfully complete a one-credit course).

D. Credits that students earn through the electronic high school shall be accepted by schools or school districts consistent with this rule.

R277-725-5. Student Eligibility for Enrollment.

A. There are no age or grade restrictions for Utah students to enroll in electronic high school courses.

B. Students are accepted into electronic high school courses on a first-come first-served basis.

C. A student may register for electronic high school course(s) following approval from the student's residence area secondary school counselor, consistent with the student's SEP/SEOP.

R277-725-6. Electronic High School Services to Students with Disabilities.

Students with disabilities who may need additional services or resources and who seek to enroll in electronic high school classes may request appropriate accommodations through the students' assigned schools or school districts.

R277-725-7. Student Fees or Tuition

A. Electronic high school courses are provided to students who are Utah residents, as defined under Section 53A-2-201(1), free of charge.

B. Non-resident students may enroll in electronic high school courses for a fee of \$100 per course per semester provided that the course can accommodate additional students.

R277-725-8. Teacher Requirements and Payments.

A. All electronic high school teachers are licensed Utah educators consistent with Section 53A-6.

B. Electronic high school teachers are paid a salary determined by the electronic high school salary schedule and negotiated to the extent necessary with the USOE Electronic High School Principal.

C. All electronic high school teachers shall be subject to laws and administrative rules for Utah educators, including the state and federal Family Educational Rights and Privacy Act, Sections 53A-13-301 and 302, and 20 U.S.C. Section 1232g and 34 C.F.R. Part 99; child abuse reporting requirements; and Professional Standards for Utah Educators, R686-103.

KEY: electronic high school

2004

Art X Sec 3

53A-1-401(3)

53A-17a-131.15



Environmental Quality, Drinking Water

R309-110

Administration: Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26970

FILED: 03/01/2004, 09:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment adds certain definitions not previously found in the rule.

SUMMARY OF THE RULE OR CHANGE: This amendment adds definitions for "desired design discharge rate", "geologist", "peak hourly flow", and "stock tight".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--These additional definitions will not have any anticipated cost or savings to the state budget since they do not change the way the rules have been applied in the past.

❖ LOCAL GOVERNMENTS: None--Local governments will not see any change as a result of these added definitions again because they will not change the way the rules have been applied in the past.

❖ OTHER PERSONS: Little to none--Certain definitions may help clarify the size and capacity of pump that a public water system may install but since it will not change the way that the rule has been applied in the past it will have little to no impact on public drinking water systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Little to none--The definition of "desired design discharge rate" should help clarify a previous misconception that the permanent pump had to have 2/3 the capacity of the test pump utilized for the constant rate test required by Subsection R309-515-6(10)(b) and this may impact some public water systems that installed smaller pumps and now wish to increase the capacity of those pumps.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have no detrimental impact on public water systems nor any affiliated businesses such as engineering firms.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.

R309-110. Administration: Definitions.

R309-110-4. Definitions.

As used in R309:

"Action Level" means the concentration of lead or copper in drinking water tap samples (0.015 mg/l for lead and 1.3 mg/l for copper) which determines, in some cases, the corrosion treatment, public education and lead line replacement requirements that a water system is required to complete.

"AF" means acre foot and is the volume of water required to cover an acre to a depth of one foot (one AF is equivalent to 325,851 gallons).

"Air gap" The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, catch basin, plumbing fixture or other device and the flood level rim of the receptacle. This distance shall be two times the diameter of the effective opening for openings greater than one inch in diameter where walls or obstructions are spaced from the nearest inside edge of the pipe opening a distance greater than three times the diameter of the effective openings for a single wall, or a distance greater than four times the diameter of the effective opening for two intersecting walls. This distance shall be three times the diameter of the effective opening where walls or obstructions are closer than the distances indicated above.

"ANSI/NSF" refers to the American National Standards Institute and NSF International. NSF International has prepared at least two health effect standards dealing with treatment chemicals added to drinking water and system components that will come into contact with drinking water, these being Standard 60 and Standard 61. The American National Standards Institute acts as a certifying agency, and determines which laboratories may certify to these standards.

"Approval" unless indicated otherwise, shall be taken to mean a written statement of acceptance from the Executive Secretary.

"Approved" refers to a rating placed on a system by the Division and means that the public water system is operating in substantial compliance with all the Rules of R309.

"Average Yearly Demand" means the amount of water delivered to consumers by a public water system during a typical year, generally expressed in MG or AF.

"AWWA" refers to the American Water Works Association located at 6666 West Quincy Avenue, Denver, Colorado 80235. Reference within these rules is generally to a particular Standard prepared by AWWA and which has completed the ANSI approval process such as ANSI/AWWA Standard C651-92 (AWWA Standard for Disinfecting Water Mains).

"Backflow" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the potable water supply from any source. Also see backsiphonage, backpressure and cross-connection.

"Backpressure" means the phenomena that occurs when the customer's pressure is higher than the supply pressure. This could be caused by an unprotected cross connection between a drinking water supply and a pressurized irrigation system, a boiler, a pressurized industrial process, elevation differences, air or steam pressure, use of booster pumps or any other source of pressure. Also see backflow, backsiphonage and cross connection.

"Backsiphonage" means a form of backflow due to a reduction in system pressure which causes a subatmospheric or negative pressure to exist at a site or point in the water system. Also see backflow and cross-connection.

"Best Available Technology" (BAT) means the best technology, treatment techniques, or other means which the Executive Secretary finds, after examination under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon for all these chemicals except vinyl chloride. Central treatment using packed tower aeration is also identified as BAT for synthetic organic chemicals.

"Board" means the Drinking Water Board.

"Breakpoint Chlorination" means addition of chlorine to water until the chlorine demand has been satisfied. At this point, further addition of chlorine will result in a free residual chlorine that is directly proportional to the amount of chlorine added beyond the breakpoint.

"C" is short for "Residual Disinfectant Concentration."

"Capacity Development" means technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

"cfs" means cubic feet per second and is one way of expressing flowrate (one cfs is equivalent to 448.8 gpm).

"Class" means the level of certification of Backflow Prevention Technician (Class I, II or III).

"Coagulation" is the process of destabilization of the charge (predominantly negative) on particulates and colloids suspended in water. Destabilization lessens the repelling character of particulates

and colloids and allows them to become attached to other particles so that they may be removed in subsequent processes. The particulates in raw waters (which contribute to color and turbidity) are mainly clays, silt, viruses, bacteria, fulvic and humic acids, minerals (including asbestos, silicates, silica, and radioactive particles), and organic particulate.

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

"Commission" means the Operator Certification Commission.

"Community Water System" (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle began January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period ran from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third is from January 1, 1999 to December 31, 2001.

"Comprehensive Performance Evaluation" (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with these rules, the comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confirmed SOC contamination area" means an area surrounding and including a plume of SOC contamination of the soil or water which previous monitoring results have confirmed. The area boundaries may be determined by measuring 3,000 feet horizontally from the outermost edges of the confirmed plume. The area includes deeper aquifers even though only the shallow aquifer is the one contaminated.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filtration area in which discrete bacterial colonies can not be distinguished.

"Contaminant" means any physical, chemical biological, or radiological substance or matter in water.

"Continuing Education Unit" (CEU) means ten contact hours of participation in, and successful completion of, an organized and approved continuing education experience under responsible sponsorship, capable direction, and qualified instruction. College credit in approved courses may be substituted for CEUs on an equivalency basis.

"Conventional Surface Water Treatment" means a series of processes including coagulation, flocculation, sedimentation, filtration and disinfection resulting in substantial particulate removal and inactivation of pathogens.

"Controls" means any codes, ordinances, rules, and regulations that a public water system can cite as currently in effect to regulate

potential contamination sources; any physical conditions which may prevent contaminants from migrating off of a site and into surface or ground water; and any site with negligible quantities of contaminants.

"Corrective Action" refers to a rating placed on a system by the Division and means a provisional rating for a public water system not in compliance with the Rules of R309, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

"Corrosion inhibitor" means a substance capable of reducing the corrosiveness of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

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

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

"Cross-Connection" means any actual or potential connection between a drinking (potable) water system and any other source or system through which it is possible to introduce into the public drinking water system any used water, industrial fluid, gas or substance other than the intended potable water. For example, if you have a pump moving non-potable water and hook into the drinking water system to supply water for the pump seal, a cross-connection or mixing may lead to contamination of the drinking water. Also see backsiphonage, backpressure and backflow.

"Cross Connection Control Program" means the program administered by the public water system in which cross connections are either eliminated or controlled.

"Cross Connection Control Commission" means the duly constituted advisory subcommittee appointed by the Board to advise the Board on Backflow Technician Certification and the Cross Connection Control Program of Utah.

"CT" or "CT_{calc}" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectant at more than one point prior to the first customer, the summation of each CT value for each disinfectant sequence before or at the first customer determines the total percent inactivation or "Total Inactivation Ratio." In determining the Total Inactivation Ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s).

"CT_{req'd}" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for *Giardia lamblia* or the (4-log) inactivation requirement for viruses.

"CT_{99.9}" is the CT value required for 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts. CT_{99.9} for a variety of disinfectants and conditions appear in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division).

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water

Source Protection Plan(s) for ground water sources and/or surface water sources are met.

"Desired Design Discharge Rate" means the discharge rate selected for the permanent pump installed in a public drinking water well source. This pumping rate is selected by the water system owner or engineer and can match or be the same rate utilized during the constant rate pump test required by R309-515 and R309-600 to determine delineated protection zones. For consideration of the number of permanent residential connections or ERC's that a well source can support (see Safe Yield) the Division will consider 2/3 of the test pumping rate as the safe yield.

"Direct Employment" means that the operator is directly compensated by the drinking water system to operate that drinking water system.

"Direct Filtration" means a series of processes including coagulation and filtration, but excluding sedimentation, resulting in substantial particulate removal.

"Direct Responsible Charge" means active on-site control and management of routine maintenance and operation duties. A person in direct responsible charge is generally an operator of a water treatment plant or distribution system who independently makes decisions during normal operation which can affect the sanitary quality, safety, and adequacy of water delivered to customers. In cases where only one operator is employed by the system, this operator shall be considered to be in direct responsible charge.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemptions returns.

"Discipline" means type of certification (Distribution or Treatment).

"Disinfectant Contact Time" ("T" in CT calculations) means the time in minutes that it takes water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C," the time in minutes that it takes water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C," the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents (see also Primary Disinfection and Secondary Disinfection).

"Disinfection profile" is a summary of daily Giardia lamblia inactivation through the treatment plant.

"Distribution System" means the use of any spring or well source, distribution pipelines, appurtenances, and facilities which carry water for potable use to consumers through a public water supply. Systems which chlorinate groundwater are in this discipline.

"Distribution System Manager" means the individual responsible for all operations of a distribution system.

"Division" means the Utah Division of Drinking Water, who acts as staff to the Board and is also part of the Utah Department of Environmental Quality.

"Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission of Radiological Units and Measurements (ICRU).

"Drinking Water" means water that is fit for human consumption and meets the quality standards of R309-200. Common usage of terms such as culinary water, potable water or finished water are synonymous with drinking water.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least fifteen service connections or serves an average of twenty-five individuals daily for at least sixty days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project.

"Drinking Water Regional Planning" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring (including consumer confidence reports), capacity development (including technical, financial and managerial aspects), environmental issues, available funding and related studies.

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

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

"Emergency Storage" means that storage tank volume which provides water during emergency situations, such as pipeline failures, major trunk main failures, equipment failures, electrical power outages, water treatment facility failures, source water supply contamination, or natural disasters.

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

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Equalization Storage" means that storage tank volume which stores water during periods of low demand and releases the water under periods of high demand. Equalization storage provides a buffer between the sources and distribution for the varying daily water demands. Typically, water demands are high in the early morning or evening and relatively low in the middle of the night. A rule-of-thumb

for equalization storage volume is that it should be equal to one average day's use.

"Equivalent Residential Connection" (ERC) is a term used to evaluate service connections to consumers other than the typical residential domicile. Public water system management is expected to review annual metered drinking water volumes delivered to non-residential connections and estimate the equivalent number of residential connections that these represent based upon the average of annual metered drinking water volumes delivered to true single family residential connections. This information is utilized in evaluation of the system's source and storage capacities (refer to R309-510).

"Executive Secretary" means the Executive Secretary of the Board as appointed and with authority outlined in 19-4-106 of the Utah Code.

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

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

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Filter profile" is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Financial Assistance" means a drinking water project loan, credit enhancement agreement, interest buy-down agreement or hardship grant.

"Fire Suppression Storage" means that storage tank volume allocated to fire suppression activities. It is generally determined by the requirements of the local fire marshal, expressed in gallons, and determined by the product of a minimum flowrate in gpm and required time expressed in minutes.

"First draw sample" means a one-liter sample of tap water, collected in accordance with an approved lead and copper sampling site plan, that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

"Flash Mix" is the physical process of blending or dispersing a chemical additive into an unblended stream. Flash Mixing is used where an additive needs to be dispersed rapidly (within a period of one to ten seconds). Common usage of terms such as "rapid mix" or "initial mix" are synonymous with flash mix.

"Floc" means flocculated particles or agglomerated particles formed during the flocculation process. Flocculation enhances the agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculated particles may be small (less than 0.1 mm diameter) micro flocs or large, visible flocs (0.1 to 3.0 mm diameter).

"Flocculation" means a process to enhance agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculation begins immediately after destabilization in the zone of decaying mixing energy (downstream from the mixer) or as a result of the turbulence of transporting flow. Such incidental flocculation may be an adequate flocculation process in some instances. Normally flocculation involves an intentional and defined process of gentle stirring to enhance contact of destabilized particles and to build floc particles of optimum size, density, and strength to be subsequently removed by settling or filtration.

"fps" means feet per second and is one way of expressing the velocity of water.

"G" is used to express the energy required for mixing and for flocculation. It is a term which is used to compare velocity gradients or the relative number of contacts per unit volume per second made by suspended particles during the flocculation process. Velocity gradients G may be calculated from the following equation: $G = \text{square root of the value}(550 \text{ times } P \text{ divided by } u \text{ times } V)$. Where: P = applied horsepower, u = viscosity, and V = effective volume.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

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

"Geometric Mean" the geometric mean of a set of N numbers $X_1, X_2, X_3, \dots, X_N$ is the Nth root of the product of the numbers.

"gpd" means gallons per day and is one way of expressing average daily water demands experienced by public water systems.

"gpm" means gallons per minute and is one way of expressing flowrate.

"gpm/sf" means gallons per minute per square foot and is one way of expressing flowrate through a surface area.

"Grade" means any one of four possible steps within a certification discipline of either water distribution or water treatment. Grade I indicates knowledge and experience requirements for the smallest type of public water supply. Grade IV indicates knowledge and experience levels appropriate for the largest, most complex type of public water supply.

"Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"ground water of high quality" means a well or spring producing water deemed by the Executive Secretary to be of sufficiently high quality that no treatment is required. Such sources shall have been designed and constructed in conformance with these rules, have been tested to establish that all applicable drinking water quality standards (as given in rule R309-200) are reliably and consistently met, have been deemed not vulnerable to natural or man-caused contamination, and the public water system management have established adequate protection zones and management policies in accordance with rule R309-600.

"ground water of low quality" means a well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-200. Such sources shall be deemed to be a low quality ground water source if any of the conditions outlined in subsection R309-505-8(1) exist. Ground water that is classified "UDI" is a subset of this definition and requires "conventional surface water treatment" or an acceptable alternative.

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

"Ground Water Under the Direct Influence of Surface Water" or "UDI" means any water beneath the surface of the ground with significant occurrence of insects or other macro organisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or (for surface water treatment systems serving at least 10,000 people only) *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence will be determined for individual sources in accordance with criteria established by the Executive Secretary. The determination of

direct influence may be based on site-specific measurements of water quality and/or documentation of well or spring construction and geology with field evaluation.

"Haloacetic acids"(five) (HAA5) mean the sum of the concentrations in mg/L of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Hardship Grant" means a grant of monies to a political subdivision that meets the drinking water project loan considerations whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:

(1) a Planning Advance which will be required to be repaid at a later date, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project;

(2) a Design Advance which will be required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies; or

(3) a Project Grant which will not be required to be repaid.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Hotel, Motel or Resort" shall include tourist courts, motor hotels, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short term basis.

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

"Initial compliance period" means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed in R309-200-5(3)(a), Table 200-2 numbers 19 to 33; R309-200-5(3)(b), Table 200-3 numbers 19 to 21; and R309-200-5(1)(c), Table 200-1 numbers 1, 5, 8, 11 and 18, initial compliance period means the first full three-year compliance after promulgation for systems with 150 or more service connections (January 1993-December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996-December 1998) for systems having fewer than 150 service connections.

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

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the subdivision for drinking water project costs.

"Labor Camp" shall mean one or more buildings, structures, or grounds set aside for use as living quarters for groups of migrant

laborers or temporary housing facilities intended to accommodate construction, industrial, mining or demolition workers.

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

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

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

"Large water system" for the purposes of R309-210-6 only, means a water system that serves more than 50,000 persons.

"Lead free" means, for the purposes of R309-210-6, when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead; when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion refers to fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300 g-6(e).

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Major Bacteriological Routine Monitoring Violation" means that no routine bacteriological sample was taken as required by R309-210-5(1).

"Major Bacteriological Repeat Monitoring Violation" - means that no repeat bacteriological sample was taken as required by R309-210-5(2).

"Major Chemical Monitoring Violation" - means that no initial background chemical sample was taken as required in R309-204-4(5).

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

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

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

DWSP management area at locations where it is separated from the ground water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

"Man-Made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, "NBS Handbook 69," except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum Contaminant Level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"Maximum residual disinfectant level" (MRDL) means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a PWS is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as MCLs pursuant to UT Code S 19-4-104. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in R309-200-5(3), operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal" (MRDLG) means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Medium-size water system" for the purposes of R309-210-6 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

"Metropolitan area sources" means all sources within a metropolitan area. A metropolitan area is further defined to contain at least 3,300 year round residents. A small water system which has sources within a metropolitan system's service area, may have those sources classified as a metropolitan area source.

"MG" means million gallons and is one way of expressing a volume of water.

"MGD" means million gallons per day and is one way of expressing average daily water demands experienced by public water systems or the capacity of a water treatment plant.

"mg/L" means milligrams per liter and is one way of expressing the concentration of a chemical in water. At small concentrations, mg/L is synonymous with "ppm" (parts per million).

"Minor Bacteriological Routine Monitoring Violation" means that not all of the routine bacteriological samples were taken as required by R309-210-5(1).

"Minor Bacteriological Repeat Monitoring Violation" means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2).

"Minor Chemical Monitoring Violation" means that the required chemical sample(s) was not taken in accordance with R309-205 and R309-210.

"Modern Recreation Camp" means a campground accessible by any type of vehicular traffic. The camp is used wholly or in part for recreation, training or instruction, social, religious, or physical education activities or whose primary purpose is to provide an outdoor group living experience. The site is equipped with permanent buildings for the purpose of sleeping, a drinking water supply under pressure, food service facilities, and may be operated on a seasonal or short term basis. These types of camps shall include but are not limited to privately owned campgrounds such as youth camps, church camps, boy or girl scout camps, mixed age groups, family group camps, etc.

"Near the first service connection" means one of the service connections within the first 20 percent of all service connections that are nearest to the treatment facilities.

"Negative Interest" means a loan having loan terms with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Board.

"New ground water source of drinking water" means a public supply ground water source of drinking water for which plans and specifications are submitted to the Division after July 26, 1993.

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

"New Water System" means a system that will become a community water system or non-transient, non-community water system on or after October 1, 1999.

"Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.

"Non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which a coliform-positive sample was taken.

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

"Non-Transient Non-Community Water System" (NTNCWS) means a public water system that regularly serves at least 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving the same individuals (industrial workers, school children, church members) by means of a separate system.

"Not Approved" refers to a rating placed on a system by the Division and means the water system does not fully comply with all the Rules of R309 as measured by R309-400.

"NTU" means Nephelometric Turbidity Units and is an acceptable method for measuring the clarity of water utilizing an electronic nephelometer (see "Standard Methods for Examination of Water and Wastewater").

"Operator" means a person who operates, repairs, maintains, and is directly employed by a public drinking water system.

"Operator Certification Commission" means the Commission appointed by the Board as an advisory Commission on public water system operator certification.

"Operating Permit" means written authorization from the Executive Secretary to actually start utilizing a facility constructed as part of a public water system.

"Optimal corrosion control treatment" for the purposes of R309-210-6 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the

treatment does not cause the water system to violate any national primary drinking water regulations.

"Package Plants" refers to water treatment plants manufactured and supplied generally by one company which are reportedly complete and ready to hook to a raw water supply line. Caution, some plants do not completely comply with all requirements of these rules and will generally require additional equipment.

"PCBs" means a group of chemicals that contain polychlorinated biphenyl.

"Peak Day Demand" means the amount of water delivered to consumers by a public water system on the day of highest consumption, generally expressed in gpd or MGD. This peak day will likely occur during a particularly hot spell in the summer. In contrast, some systems associated with the skiing industry may experience their "Peak Day Demand" in the winter.

"Peak Hourly Flow" means the maximum hourly flow rate from a water treatment plant and utilized when the plant is preparing disinfection profiling as called for in R309-215-14(2).

"Peak Instantaneous Demand" means calculated or estimated highest flowrate that can be expected through any water mains of the distribution network of a public water system at any instant in time, generally expressed in gpm or cfs (refer to section R309-510-9).

"Person" means an individual, corporation, company, association, partnership; municipality; or State, Federal, or tribal agency.

"Picocurie" (pCi) means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plan Approval" means written approval, by the Executive Secretary, of contract plans and specifications for any public drinking water project which have been submitted for review prior to the start of construction (see also R309-500-7).

"Plug Flow" is a term to describe when water flowing through a tank, basin or reactors moves as a plug of water without ever dispersing or mixing with the rest of the water flowing through the tank.

"Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to re-contamination by surface water runoff.

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

"Point-of-Entry Treatment Device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-Use Treatment Device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

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

"Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

"Pollution source" means point source discharges of contaminants to ground or surface water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in

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

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

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

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

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

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

"ppm" means parts per million and is one way of expressing the concentration of a chemical in water. At small concentrations generally used, ppm is synonymous with "mg/l" (milligrams per liter).

"Practical Quantitation Level" (PQL) means the required analysis standard for laboratory certification to perform lead and copper analyses. The PQL for lead is .005 milligrams per liter and the PQL for copper is 0.050 milligrams per liter.

"Primary Disinfection" means the adding of an acceptable primary disinfectant during the treatment process to provide adequate levels of inactivation of bacteria and pathogens. The effectiveness is measured through "CT" values and the "Total Inactivation Ratio." Acceptable primary disinfectants are, chlorine, ozone, and chlorine dioxide (see also "CT" and "CT_{99.9}").

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by R309-705-8, and by the Board.

"Drinking Water Project Costs" include the cost of acquiring and constructing any drinking water project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys,

preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

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

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

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

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

"Public Drinking Water Project" means construction, addition to, or modification of any facility of a public water system which may affect the quality or quantity of the drinking water (see also section R309-500-6).

"Public Water System" (PWS) means a system, either publicly or privately owned, providing water through constructed conveyances for human consumption and other domestic uses, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year and includes collection, treatment, storage, or distribution facilities under the control of the operator and used primarily in connection with the system, or collection, pretreatment or storage facilities used primarily in connection with the system but not under his control (see 19-4-102 of the Utah Code Annotated). All public water systems are further categorized into three different types, community (CWS), non-transient non-community (NTNCWS), and transient non-community (TNCWS). These categories are important with respect to required monitoring and water quality testing found in R309-205 and R309-210 (see also definition of "water system").

"Raw Water" means water that is destined for some treatment process that will make it acceptable as drinking water. Common usage of terms such as lake or stream water, surface water or irrigation water are synonymous with raw water.

"Recreational Home Developments" are subdivision type developments wherein the dwellings are not intended as permanent domiciles.

"Recreational Vehicle Park" means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for individuals utilizing recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the general public or restricted to the organizational or institutional member and their guests only.

"Regional Operator" means a certified operator who is in direct responsible charge of more than one public drinking water system.

"Regionalized Water System" means any combination of water systems which are physically connected or operated or managed as a single unit.

"Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (mrem) is 1/1000 of a rem.

"Renewal Course" means a course of instruction, approved by the Subcommittee, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

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

(1) the proposed well location shall be within a radius of 150 feet from an existing ground water supply well; and

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

"Required reserve" means funds set aside to meet requirements set forth in a loan covenant/bond indenture.

"Residual Disinfectant Concentration" ("C" in CT calculations) means the concentration of disinfectant, measured in mg/L, in a representative sample of water.

"Restricted Certificate" means that the operator has qualified by passing an examination but is in a restricted certification status due to lack of experience as an operator.

"Roadway Rest Stop" shall mean any building, or buildings, or grounds, parking areas, including the necessary toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. It does not include scenic view or roadside picnic areas or other parking areas if these are properly identified

"Routine Chemical Monitoring Violation" means no routine chemical sample(s) was taken as required in R309-205, R309-210 and R309-215.

"Safe Yield" means the annual quantity of water that can be taken from a source of supply over a period of years without depleting the source beyond its ability to be replenished naturally in "wet years".

"Sanitary Seal" means a cap that prevents contaminants from entering a well through the top of the casing.

"scfm/sf" means standard cubic foot per minute per square foot and is one way of expressing flowrate of air at standard density through a filter or duct area.

"Secondary Disinfection" means the adding of an acceptable secondary disinfectant to assure that the quality of the water is maintained throughout the distribution system. The effectiveness is measured by maintaining detectable disinfectant residuals throughout the distribution system. Acceptable secondary disinfectants are chlorine, chloramine, and chlorine dioxide.

"Secondary Maximum Contaminant Level" means the advisable maximum level of contaminant in water which is delivered to any user of a public water system.

"Secretary to the Subcommittee" means that individual appointed by the Executive Secretary to conduct the business of the Subcommittee.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Semi-Developed Camp" means a campground accessible by any type of vehicular traffic. Facilities are provided for both protection of site and comfort of users. Roads, trails and campsites are defined and basic facilities (water, flush toilets and/or vault toilets, tables, fireplaces or tent pads) are provided. These camps include but are not limited to National Forest campgrounds, Bureau of Reclamation campgrounds, and youth camps.

"Service Connection" means the constructed conveyance by which a dwelling, commercial or industrial establishment, or other water user obtains water from the supplier's distribution system. Multiple dwelling units such as condominiums or apartments, shall be considered to have a single service connection, if fed by a single line, for the purpose of microbiological repeat sampling; but shall be

evaluated by the supplier as multiple "equivalent residential connections" for the purpose of source and storage capacities.

"Service Factor" means a rating on a motor to indicate an increased horsepower capacity beyond nominal nameplate capacity for occasional overload conditions.

"Service line sample" means a one-liter sample of water collected in accordance with R309-210-6(3)(b)(iii), that has been standing for at least 6 hours in a service line.

"Single family structure" for the purposes of R309-210-6 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Small water system" means a public water system that serves 3,300 persons or fewer.

"Specialist" means a person who has successfully passed the written certification exam and meets the required experience, but who is not in direct employment with a Utah public drinking water system.

"Stabilized drawdown" means that there is less than 0.5 foot of change in water level measurements in a pumped well for a minimum period of six hours.

"Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

"SOCs" means synthetic organic chemicals.

"Stabilized Drawdown" means the drawdown measurements taken during a constant-rate yield and drawdown test as outlined in subsection R309-515-14(10)(b) are constant (no change).

"Stock Tight" means a type of fence that can prevent the passage of grazing livestock through its boundary. An example of such fencing is provided by design drawing 02838-3 titled "Cattle Exclosure" designed by the U.S. Department of the Interior, Bureau of Land Management, Division of Technical Services (copies available from the Division).

"Subcommittee" means the Cross Connection Control Subcommittee.

"Supplier of water" means any person who owns or operates a public water system.

"Surface Water" means all water which is open to the atmosphere and subject to surface runoff (see also section R309-204-5(1)). This includes conveyances such as ditches, canals and aqueducts, as well as natural features.

"Surface Water Systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection (Federal SWTR subpart H) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Surface Water Systems (Large)" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection and serve a population of 10,000 or greater (Federal SWTR subpart P and L) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Surface Water Systems (Small)" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection and serve a population less than 10,000 (Federal SWTR subpart L, T and P (sanitary survey requirements)) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Susceptibility" means the potential for a PWS (as determined at the point immediately preceding treatment, or if no treatment is provided, at the entry point to the distribution system) to draw water contaminated above a demonstrated background water quality

concentration through any overland or subsurface pathway. Such pathways may include cracks or fissures in or open areas of the surface water intake, and/or the wellhead, and/or the pipe/conveyance between the intake and the water distribution system or treatment.

"SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

"T" is short for "Contact Time" and is generally used in conjunction with either the residual disinfectant concentration (C) in determining CT or the velocity gradient (G) in determining mixing energy GT.

"Ten State Standards" refers to the Recommended Standards For Water Works, 1997 by the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers available from Health Education Services, A Division of Health Research Inc., P.O. Box 7126, Albany, New York 12224, (518)439-7286.

"Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground water source of drinking water. It also means the time required for a particle of water to travel from a specific point along a surface water body to an intake.

"Total Inactivation Ratio" is the sum of all the inactivation ratios calculated for a series of disinfection sequences, and is indicated or shown as: "Summation sign ($CT_{calc}/CT_{req'd}$)."

A total inactivation ratio equal to or greater than 1.0 is assumed to provide the required inactivation of *Giardia lamblia* cysts. $CT_{calc}/CT_{99.9}$ equal to 1.0 provides 99.9 percent (3-log) inactivation, whereas CT_{calc}/CT_{90} equal to 1.0 only provides 90 percent (1-log) inactivation.

"Too numerous to count" (TNTC) means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform detection.

"Total Organic Carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total Trihalomethanes" (TTHM) means the MCL for trihalomethanes. This is the sum of four of ten possible isomers of chlorine/bromine/methane compounds, all known as trihalomethanes (THM). TTHM is defined as the arithmetic sum of the concentrations in micro grams per liter of only four of these (chloroform, bromodichloromethane, dibromochloromethane, and bromoform) rounded to two significant figures. This measurement is made by samples which are "quenched," meaning that a chlorine neutralizing agent has been added, preventing further THM formation in the samples.

"Training Coordinating Committee" means the voluntary association of individuals responsible for environmental training in the state of Utah.

"Transient Non-Community Water System" (TNCWS) means a non-community public water system that does not serve 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those, RV park, diner or convenience store where the permanent nonresident staff number less than 25, but the number of people served exceeds 25.

"Treatment Plant" means those facilities capable of providing any treatment to any waterserving a public drinking water system. (Examples would include but not be limited to disinfection,

conventional surface water treatment, alternative surface water treatment methods, corrosion control methods, aeration, softening, etc.).

"Treatment Plant Manager" means the individual responsible for all operations of a treatment plant.

"Trihalomethanes" (THM) means any one or all members of this class of organic compounds.

"Trihalomethane Formation Potential" (THMFP) - these samples are collected just following disinfection and measure the highest possible TTHM value to be expected in the water distribution system. The formation potential is measured by not neutralizing the disinfecting agent at the time of collection, but storing the sample seven days at 25 degrees C prior to analysis. A chlorine residual must be present in these samples at the end of the seven day period prior to analysis for the samples to be considered valid for this test. Samples without a residual at the end of this period must be resampled if this test is desired.

"Turbidity Unit" refers to NTU or Nephelometric Turbidity Unit.

"UDI" means under direct influence (see also "Ground Water Under the Direct Influence of Surface Water").

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.

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

"Unregulated Contaminant" means a known or suspected disease causing contaminant for which no maximum contaminant level has been established.

"Unrestricted Certificate" means that a certificate of competency issued by the Executive Secretary when the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on the certificate.

"Virus" means a virus of fecal origin which is infectious to humans.

"Waterborne Disease Outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system, as determined by the appropriate local or State agency.

"Watershed" means the topographic boundary that is the perimeter of the catchment basin that contributes water through a surface source to the intake structure. For the purposes of surface water DWSP, if the topographic boundary intersects the state boundary, the state boundary becomes the boundary of the watershed.

"Water Supplier" means a person who owns or operates a public drinking water system.

"Water System" means all lands, property, rights, rights-of-way, easements and related facilities owned by a single entity, which are deemed necessary or convenient to deliver drinking water from source to the service connection of a consumer(s). This includes all water rights acquired in connection with the system, all means of conserving, controlling and distributing drinking water, including, but not limited to, diversion or collection works, springs, wells, treatment plants, pumps, lift stations, service meters, mains, hydrants, reservoirs, tanks and associated appurtenances within the property or easement boundaries under the control of or controlled by the entity owning the system.

In accordance with R309, certain water systems may be exempted from monitoring requirements, but such exemption does not extend to submittal of plans and specifications for any modifications considered a public drinking water project.

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

"Zone of Influence" corresponds to area of the upper portion of the cone of depression as described in "Groundwater and Wells," second edition, by Fletcher G. Driscoll, Ph.D., and published by Johnson Division, St. Paul, Minnesota.

KEY: drinking water, definitions

~~December 9, 2002~~ 2004

Notice of Continuation September 16, 2002

19-4-104

63-46b-4



Environmental Quality, Drinking Water **R309-204** (Changed to R309-515) Facility Design and Operation: Source Development

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26971

FILED: 03/01/2004, 09:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to re-number the rule to match previous changes made to rules governing facility design and operation of public drinking water systems; to clarify who may prepare specifications for the drilling of a drinking water source well as well as who may witness the placement of a grout seal; and to clarify the required constant rate pump test and results.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the numbering of the rule to Rule R309-515 and includes corrections of any references within the rule; it clarifies who may prepare drilling specifications for public drinking water wells; it clarifies the individuals authorized to witness the placement of grout seals; it clarifies items to be reported concerning the constant-rate pump test conducted on wells; it clarifies the capacity of the pump that may be installed by the system; and it corrects some spelling errors.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--Since this amendment simply changes the rule number and corrects references therein there is no cost to the state budget.

❖ **LOCAL GOVERNMENTS:** None--Certain clarifications address the size and capacity of the pump that may be installed by local public drinking water systems but these will have no impact on local government since it will not change the way that the rule has been applied in the past.

❖ **OTHER PERSONS:** None--Clarifications will help engineering firms as well as public water systems in understanding how the constant-rate pump test relates to the permanent pump

installation but there should be no adverse cost to either since it will not change the way that the rule has been applied in the past.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Clarifications will help engineering firms as well as public water systems in understanding how the constant-rate pump test relates to the permanent pump installation but there should be no adverse cost to either since it will not change the way that the rule has been applied in the past.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes and renumbering of this rule will have no detrimental impact on public water systems nor any of the affiliated businesses such as engineering firms.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.

R309-~~204~~515. Facility Design and Operation: Source Development.

R309-~~204~~515-1. Purpose.

This rule specifies requirements for public drinking water sources. It is intended to be applied in conjunction with R309-~~204~~500 through R309-~~244~~550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water ~~that~~^{which} consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-~~204~~515-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

R309-~~204~~515-3. Definitions.

Definitions for certain terms used in this rule are given in R309-~~200~~110 but may be further clarified herein.

R309-~~204~~515-4. General.

(1) Issues to be Considered.

The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in R309-~~403~~200, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems established after January 1, 1998 serving more than 100 connections shall have a minimum of two sources, except where served by a water treatment plant. Community Water Systems established prior to that date, currently serving more than 100 connections, shall obtain a separate source no later than January 1, 2000. For all systems, the total developed source capacity(ies) shall equal or exceed the peak day demand of the system. Refer to R309-~~203~~510-7 of these rules for procedure to estimate the peak day demand.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Executive Secretary that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-~~403~~200 can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) All the primary and secondary inorganic contaminants listed in R309-~~403~~200, Table ~~403~~200-1 and Table ~~403~~200-5 (excluding Asbestos unless it would be required by R309-205-5(2)~~404-4.1-2~~),

(b) Ammonia as N; Boron; Calcium; Chromium, Hex as Cr; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, u mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO₂; Surfactant as MBAS; Total Hardness as CaCO₃; and Alkalinity as CaCO₃,

(c) Pesticides, PCB's and SOC's as listed in R309-200-5(3)(a)~~403-2.3a~~, Table 200~~403~~-2 unless the system is a transient non-community pws or, if a community pws or non-transient non-community pws, they have received waivers in accordance with R309-205-6(1)(f)~~404-4.3.4f~~. The following six constituents have been excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin,

(d) VOC's as listed in R309-200-5(3)(b)~~403-2.3b~~, Table 200~~403~~-3 unless the system is a transient non-community pws, and

(e) Radiologic chemicals as listed in R309-200-5(4)~~403-2.4~~ unless the system is a non-transient non-community pws or a transient non-community pws.[

~~(f) Unregulated contaminants as listed in R309-104-5.1.1 list A and list B, unless a transient non-community pws.]~~

All analyses shall be performed by a certified laboratory as required by R309-205-4~~404-3~~ (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-~~505~~~~202~~-7(1)(a)(i) provides information on the classification of water sources. The Executive Secretary shall classify all existing or new sources as either:

(a) Surface water or ground water under direct influence of surface water which will require conventional surface water treatment or an approved equivalent, or as

(b) Ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Executive Secretary prior to source approval.

R309-~~204~~515-5. Surface Water Sources.

(1) Definition.

A surface water source, as is defined in R309-~~200~~110, shall include, but not be limited to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells which have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Executive Secretary.

(2) Pre-design Submittal.

The following information must be submitted to the Executive Secretary and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) A copy of the chemical analyses required by R309-~~403~~200 and described in R309-~~204~~515-4(5) above, and

(b) A survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs,

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies,

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes,

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water,

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards, and

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or municipal purposes;

(b) Documentation regarding the minimum firm yield which the watercourse is capable of producing (see R309-~~204~~515-5(4)(a) below; and

(c) Complete plans and specifications and supporting documentation for the proposed treatment facilities so as to ascertain compliance with R309-~~206~~525 or R309-~~207~~530.

(4) Quantity.

The quantity of water from surface sources shall:

(a) Be assumed to be no greater than the low flow of a 25 year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) Meet or exceed the anticipated peak day demand for water as estimated in R309-510~~203~~-7 and provide a reasonable surplus for anticipated growth; and

(c) Be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal which would be anticipated in the normal operation of the treatment facility.

(5) Diversion Structures.

Design of intake structures shall provide for:

(a) Withdrawal of water from more than one level if quality varies with depth;

(b) Intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) Separate facilities for release of less desirable water held in storage;

(d) Occasional cleaning of the inlet line;

(e) A diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and

(f) Suitable protection of pumps where used to transfer diverted water (refer to R309-540~~209~~-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) Removal of brush and trees to the high water level;

(b) Protection from floods during construction;

(c) Abandonment of all wells which may be inundated (refer to applicable requirements of the Division of Water Rights); and

(d) Adequate precautions to limit nutrient loads.

R309-~~204~~515-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, should assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources should be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply should be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line should be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well

commences, the well driller must receive a start card from the State Engineer's Office.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-600[443]. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as follows:

(a) sewer lines shall be ductile iron pipe with mechanical joints or fusion welded high density polyethylene plastic pipe (solvent welded joints shall not be accepted);

(b) lateral to main connection shall be shop fabricated or saddled with a mechanical clamping watertight device designed for the specific pipe;

(c) the sewer pipe to manhole connections shall be made using a shop fabricated sewer pipe seal ring cast into the manhole base (a mechanical joint shall be installed within 12 inches of the manhole base on each line entering the manhole, regardless of the pipe material);

(d) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

(e) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690;

(f) sewer manholes shall meet the following requirements:

(i) the manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be shop fabricated in a single concrete pour.

(ii) the manholes shall be constructed of reinforced concrete.

(iii) all sewer lines and manholes shall be air pressure tested after installation.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600-13[443-13(2)], and

(ii) engineering plans and specifications governing the well drilling, prepared by a licensed well driller holding a current Utah Well Drillers Permit if previously authorized by the Executive Secretary or prepared, signed and stamped by a licensed professional engineer or professional geologist licensed to practice in Utah.

(b) Grouting Inspection During Well Construction.

An engineer from the Division, or the appropriate district engineer of the Department of Environmental Quality, an authorized representative of the State Engineer's Office, or an individual authorized by the Executive Secretary shall be contacted at least three days before the anticipated beginning of the well grouting procedure (see R309-[204]515-6(6)(i)). The well grouting procedure shall be witnessed by one of these individuals or their designee.

(c) After completion of the well drilling the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the authorized individual[engineer] described in R309-515[204]-6(5)(b) above, indicating inspection and

confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the pump test including the yield vs. drawdown test as described in R309-515[204]-6(10)(b) along with comments / interpretation by a licensed professional engineer or licensed professional geologist of the graphic drawdown information required by R309-515-6(b)(vi)(E);

(iv) a copy of the chemical analyses required by R309-515[204]-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source;

(vi) a copy of complete plans and specifications prepared, signed and stamped by a licensed professional engineer covering the well housing, equipment and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-500[204]-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to [~~casings,~~] drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may [~~be~~] contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-9.4[7.2] of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 1, 2001[19,1995], Division of Water Rights);

(ii) have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Executive Secretary based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Grouting Techniques and Requirements.

All permanent well casing for public drinking water wells shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary (see R309-500-4(1)[~~402-2.2~~]).

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600[~~443~~]-6(1)(v) (see also R309-151-6(6)(i)(iii)(D) below).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the permanent casing and the drilled hole, taking into consideration any joint couplings. If a carrier casing is left in place, the minimum clearances above shall pertain to both annular openings (between casings and between carrier casing and the drilled hole), the carrier casing shall be adequately perforated so as to ensure grout contact with the native formations, and the carrier casing shall be withdrawn at least five feet during grouting operations.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Executive Secretary.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a clay seal of clean local clay mixed with at least ten percent swelling bentonite may be used when approved by the Executive Secretary.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings should be removed but shall be withdrawn at least five feet during the grouting operation to ensure grout contact with the native formations.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600[~~443~~]-6(1)(v)). If the clay layer starts below 100 feet, grout shall extend from the ground surface to a depth of at least 100 feet, grout or native fill may be utilized from there to the top of the clay layer, and then grout placed completely through the protective clay layer. If the clay layer starts and ends above 100 feet, grout shall extend from the ground surface down to and completely through the protective clay layer.

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set, usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-515[204]-6(6)(b) or R309-515[204]-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a completed well until permanent equipment is installed.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned well is filled with cement- grout or concrete, these materials shall be applied to the well-hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of [at least 1.5 times] the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to [1.5 times] the desired design discharge rate,

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semi-logarithmic[semilogarithmic] graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7)[~~102-4.7~~] and/or R309-515-8(2) for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iii) be approved by NSF International or the Pitless Adapter Association or other appropriate Review Authority,

(iv) have suitable access to the interior of the casing in order to disinfect the well,

(v) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vi) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(vii) allow at least one check valve within the well casing,

(viii) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(ix) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(x) be of watertight construction throughout,

(xi) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiii) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xiv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-~~540~~[209], well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-~~515~~[204]-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-~~540~~[209]-5(2) (a) through (h)

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

R309-~~204~~515-7. Ground Water - Springs.**(1) General.**

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring should only be made after consideration of the requirements of R309-~~515~~204-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-~~600~~443-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-~~515~~204-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-~~505~~202-6).

(4) Pre-construction Submittal

Before commencement of construction of spring development improvements the following information must be submitted to the Executive Secretary and approved in writing.

(a) Detailed plans and specifications covering the development work.

(b) A copy of an engineer's or geologist's statement indicating:

- (i) the historical record (if available) of spring flow variation,
- (ii) expected minimum flow and the time of year it will occur,
- (iii) expected maximum flow and the time of year it will occur,
- (iv) expected average flow,
- (v) the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-~~110~~200).

(c) A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source.

(d) A Preliminary Evaluation Report on source protection issues as required by R309-~~600~~443-13(4).

(e) A copy of the chemical analyses required by R309-~~515~~204-4(5).

(f) An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-~~505~~202-7(1)(a)(4)).

(5) Information Required after Spring Development.

After development of a culinary spring, the following information shall be submitted:

- (a) Proof of satisfactory bacteriologic quality.
- (b) Information on the rate of flow developed from the spring.
- (c) As-built plans of spring development.

(6) Operation Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Executive Secretary (see R309-500-9).

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels must be covered with a minimum of ten feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

- (i) the liner has a minimum thickness of at least 10 mils,
- (ii) all seams in the liner are folded or welded to prevent leakage,
- (iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,
- (iv) the liner is installed in such a manner as to assure its integrity.

No stones, two inch or larger or sharp edged, shall be located within two inches of the liner.

(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-~~545~~210-14 with respect to access ~~openings~~[manholes], ~~venting~~[air vents], and ~~tank overflow~~[piping]. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-~~110~~200). In remote areas where no grazing or public access is possible, the fencing requirement may be waived by the Executive Secretary. In populated areas a six foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation which has a deep root system shall be removed.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

R309-~~204~~515-8. Operation and Maintenance.**(1) Spring Collection Area Maintenance.**

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Executive Secretary.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Division. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

KEY: drinking water, source development, source maintenance
~~January 1, 1998~~2004
Notice of Continuation September 16, 2002
19-4-104



Environmental Quality, Drinking Water

R309-700

Financial Assistance: State Drinking Water Project Revolving Loan Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26974

FILED: 03/01/2004, 13:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed amendment is to clarify the application and project initiation procedures, the applicant's need to demonstrate public support, and to revise Table 2 used to determine the interest rate to more closely match that calculated by Rule R309-705. (DAR NOTE: The proposed amendment to R309-705 is found under DAR No. 26975 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This amendment adds language that clarifies what, if any, costs incurred subsequent to submission of a funding application and prior to execution

of a financial assistance agreement are eligible for reimbursement; it removes language defining technical assistance; it clarifies what must be included in a complete application concerning alternatives considered and justification of chosen project and evaluation of credit enhancement, interest buy-down and loan methods applicable to the project; it provides for minimum public hearing notice and certified result to be submitted to Board; it adds language allowing the Board to accept other measurements of water users' income where they deem the Tax Commission data insufficient; it includes new special incentives into Table 2; and it eliminates Table 3.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104, and Title 73, Chapter 10c

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--Since the proposed amendments simply clarify certain issues required by the Board at this time and since any changes to the calculated interest rate as a result of changes to Table 2 will not add to or reduce the cost of administration by the State, then there will be no increase nor reduction to State Budget as a result of these changes.

❖ **LOCAL GOVERNMENTS:** Little to none--These amendments simply clarify costs for which reimbursement is eligible and changes in calculated interest are intended to more closely match that calculated by Rule R309-705.

❖ **OTHER PERSONS:** Little to none--Clarification of issues to be addressed by applicants concerning alternatives and justification for the chosen project as well as financial alternatives may slightly increase the work load for engineering companies and financial consultants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some applicants may see slightly increased costs from engineers and financial consultants as a result of the clarification of items required from the applicant at the time of application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no detrimental impact on water systems applying for or receiving financial assistance, nor will it adversely impact any of the affiliated businesses such as engineering firms, escrow agents, bond counselors, or financial advisors which provide service to the applicants.

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

ENVIRONMENTAL QUALITY
 DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.

R309-700. Financial Assistance: State Drinking Water Project Revolving Loan Program.

R309-700-1. Purpose.

This rule establishes criteria for financial assistance to public drinking water systems in accordance with Title 73, Chapter 10c, Utah Code Annotated using funds made available by the Utah legislature from time to time for this purpose.

R309-700-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue loans to political subdivisions to finance all or part of drinking water project costs and to enter into "credit enhancement agreements", "interest buy-down agreements", and "Hardship Grants" is provided in Chapter 10c, Title 73, Utah Code.

R309-700-3. Definitions and Eligibility.

Title 73, Chapter 10c, subsection 4(2)(a) limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary project, easement or right of way, ~~except property condemnation cost, which are not eligible costs;~~ engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; ~~Hardship Grant Assessments and~~ interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law. Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water

project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system ~~which is~~ owned by a political subdivision of the State.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action ~~[With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and / or safety of the public / water users.]~~ resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health and / or safety of the public / water users.

~~"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify and / or correct system deficiencies, to help a water system overcome other technical problems. The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.]~~

R309-700-4. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement ~~[including cost effectiveness evaluations of financing methods and alternatives, for consideration by the Board].~~

(2) A completed application form, ~~project~~ engineering report ~~[as appropriate]~~ listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project, and financial capability assessment are submitted to the Board. Comments from the local health department and/or district engineer ~~may~~ shall accompany the application. Comments from other interested parties such as an association of governments will also be accepted.

(3) ~~[The staff prepares]~~ A ~~[a]~~ n engineering and financial feasibility report is prepared by Division staff ~~[on the project]~~ for ~~[presentation to]~~ the Board's consideration.

(4) The Board ~~["Authorizes"]~~ may authorize financial assistance for the project on the basis of the staff's feasibility report ~~[prepared by the staff, and]~~ designate[s] whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and

approve[s] the project schedule (see R309-700-13). The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant (see R309-700-5). If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Chapter 10c, Title 73 "Utah Code", which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Section 73-10c-4(2), Utah Code, the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R309-700-11(2) or in connection with any other interest buy-down arrangement.

(5) Planning Grant - The applicant must submit an application provided by the Division and attach a scope of work, project schedule, cost estimates, and a draft contract for planning services.

(6) Planning Loan - The applicant requesting a Planning Loan must complete an application for a Planning Loan, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations and a schedule of work.

(7) Design Grant or Loan - The applicant requesting a Design Grant or Loan must have completed an engineering plan [~~which~~] meet[s]ing program requirements.

(8) The project applicant must demonstrate public support for the project. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water.

(9) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant (see R309-700-14(3)), must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to the Utah Code, Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(10) Hardship Grant - The Board or its designee executes a grant agreement setting forth the terms and conditions of the grant.

(11) The Board, through its Executive Secretary, shall issue[s] a Plan Approval for plans and specifications, [~~and concurs in bid advertisement.~~]

(12) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement as described in R309-700-11(2) [~~, from the Board,~~] to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in R309-700-11(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(13) ~~If [For]~~ a revenue bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. ~~If [For]~~ a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(14) [~~A plan of operation, for the project after construction is complete, including adequate staffing with an operator, certified at the appropriate level in accordance with R309-300 in responsible charge, training, and start up procedures to assure efficient operation and maintenance of the facilities, must be submitted by the applicant and approved by the Board.~~] A plan of operation for the completed project, including staffing with an appropriately certified (in accordance with R309-300) operator, staff training, and procedures to assure efficient start-up, operation and maintenance of the project, must be submitted by the applicant and approved by the Board, its Executive Secretary or other designee.

(15) The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(16) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

~~[(17) A position fidelity bond must be provided for the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system.]~~

(17)[48]) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board ~~executes[issues]~~ the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (See R309-700-10 and -11).

(18)[49]) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds [~~on the open market~~] and notifies the Board of the terms of sale. If a credit enhancement agreement is [~~being~~]utilized, the bonds [~~sold on the open market~~] shall contain the legend required by Section 73-10c-6(3)(d), Utah Code. If an interest buy-down agreement is [~~being~~]utilized, the bonds [~~sold on the open market~~] shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

- (19[20]) The applicant opens bids for the project.
- (20[21]) LOAN ONLY - The Board [~~gives final~~] approves [~~at~~] purchase of the bonds and executes the loan contract (see R309-700-4(24)).
- (21[22]) LOAN ONLY - The [~~final closing of the~~] loan closing is conducted.
- (22[23]) A preconstruction conference shall be held.
- (23[24]) The applicant issues a written notice to proceed to the contractor.
- (24[25]) The applicant must have adopted [~~in place~~] a Water Management and Conservation Plan prior to executing the loan agreement.

R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.

- (1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:
 - (a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;
 - (b) The ability of the applicant to repay the loan or other project obligations;
 - (c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and
 - (d) Whether the drinking water project:
 - (i) meets a critical local or state need;
 - (ii) is cost effective;
 - (iii) will protect against present or potential hazards;
 - (iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;
 - (v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.
 - (vi) is needed as a result of an Emergency.
 - (e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;
 - (f) Consistency with other funding source commitments which may have been obtained for the project;
 - (g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT	POINTS
1. PUBLIC HEALTH AND WELFARE (SELECT ONE)	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
2. WATER QUALITY RECORD (SELECT ONE)	

A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0
5. ABILITY TO MEET FUTURE DEMANDS (Select One)	
A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3
6. OVERALL URGENCY (Select One)	
A. System is generally out of water. There is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	100

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Tables 2 and 3 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent Revenue Bond Buyer Index (RBBI) as published by the Bond Buyer's Guide [market yields for "A" rated, tax exempt, 20-year municipal revenue bonds]. The interest rate so calculated will be assigned to the financial assistance. ~~[This interest rate may be further reduced, in a manner determined by Board resolution from time to time, by the ratio of the number of points assigned to the applicant's water system from Table 3 to the total points available.]~~ To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

For hardship grant consideration, exclusive of planning and design grants or loans described in Sections R309-700-6, 7 and 8, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income. The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefitting connection	15
B. \$501 to \$1,500	12
C. \$1,501 to \$2,000	9
D. \$2,001 to \$3,000	6
E. \$3,001 to \$5,000	3
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. PRIVATE SECTOR OR OTHER FUNDING, BUT NOT OWN CONTRIBUTION (SELECT ONE)	
A. A reasonable search for it has been made without success	10
B. Will provide greater than 50% of project cost	10
C. Will provide 25 to 49% of project cost	8
D. Will provide 10 to 24% of project cost	5
E. Will provide 1 to 9% of project cost	3
F. Has not been investigated	0
3. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	15
B. 71 to 90% of State Median AGI	12
C. 91 to 115% of State Median AGI	9
D. 116 to 135% of State Median AGI	6
E. 136 to 160% of State Median AGI	3
F. Greater than 161% of State Median AGI	0
4. APPLICANT'S COMMITMENT TO PROJECT	
[4A.] PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
a. Greater than 25% of project funds	15
b. 10 to 25% of project funds	12
c. 5 to 9% of project funds	9
d. 2 to 4% of project funds	6
e. Less than 2% of project funds	0

~~[4B. RESIDENTS ARE WILLING TO (AND IT IS CONFIRMED BY RESIDENTS)-~~

INCREASE WATER BILL BY (SELECT ONE)	
a. Greater than \$10.00 per month per connection	15
b. \$5.01 to \$10.00 per month per connection	11
c. \$2.51 to \$5.00 per month per connection	7
d. \$1.00 to \$2.50 per month per connection	3
e. Less than \$1.00 per month per connection	0

5. ABILITY TO REPAY LOAN	
5A. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
a. Greater than 2.50% of local median AGI	15
b. 2.01 to 2.50% of local median AGI	11
c. 1.51 to 2.00% of local median AGI	7
d. 1.01 to 1.50% of local median AGI	3
e. 0 to 1.00% of local median AGI	0
5B. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)	
a. Greater than 12% of fair market value	15
b. 8.1 to 12% of fair market value	12
c. 4.1 to 8.0% of fair market value	9
d. 2.1 to 4.0% of fair market value	6
e. 1.0 to 2.0% of fair market value	3
f. Less than 1% of fair market value	0

6. SPECIAL INCENTIVES

Applicant:	
<u>A. is using a master plan which includes water management & conservation</u>	<u>4</u>
<u>B. has a replacement fund receiving annual deposits of 5% of drinking water budget</u>	<u>4</u>
<u>C. is creating or enhancing a regionalization Plan</u>	<u>4</u>
<u>D. has a rate structure encouraging conservation</u>	<u>4</u>
<u>E. has received a Quality Community designation</u>	<u>4</u>
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

[TABLE 3

SPECIAL INCENTIVES	
	POINTS
1. Applicant has secured adequate protection zones for all existing drinking water sources	5
2. Applicant has developed a master plan to guide water system growth in the next 20 years	5
3. Applicant has an established replacement fund	5
4. Project will create a new regionalization plan or maintain integrity of existing regionalization plan if regionalization is possible in the judgement of the Board. If not, the points will not be assigned and the total possible points will be 35.	5
5. Applicant has established a backflow prevention program	5
6. Applicant has established a rate structure to encourage water conservation	5
7. Project is necessary because of unforeseen circumstances	5
8. Applicant has a written emergency response plan	5
TOTAL POSSIBLE POINTS FOR SPECIAL INCENTIVES	40

]

- (b) Optimizing return on the security account while still allowing the project to proceed.
- (c) Local political and economic conditions.
- (d) Cost effectiveness evaluation of financing alternatives.
- (e) Availability of funds in the security account.
- (f) Environmental need.
- (g) Other criteria the Board may deem appropriate.

R309-700-6. Planning Grant.

(1) A Planning Grant can only be made to a political subdivision with a population less than 10,000 people ~~[which]~~ ~~[demonstrating[es]]~~ an urgent need to evaluate its drinking water system's technical, financial and managerial capacity, ~~[meet the Hardship Grant Criteria]~~ and lacks the financial means to readily accomplish such an evaluation. A Planning Grant will be limited to \$10,000 or the estimated cost of the planning effort, whichever is less unless otherwise approved by the Board.

(2) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Grant will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and the Board is executed.

(3) Failure on the part of the recipient of a Planning Grant to implement the findings of the plan may prejudice any future applications for drinking water project funding.

(4) The recipient of a Planning Grant must first receive written approval for any cost increases or changes to the scope of work.

(5) The Planning Grant recipient must provide a copy of the planning project results to the Division. The planning effort shall conform to rules R309.

R309-700-7. Planning Loan[Advance].

(1) A Planning Loan can only be made to a political subdivision which demonstrates a financial hardship ~~[which]~~ ~~[preventing[s]]~~ the completion of project planning.

(2) A Planning Loan is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. The Planning Loan must be repaid to the Board unless the payment obligation is waived by the Board.

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Loan will be deposited with these other funds into a supervised escrow account at the time the loan agreement between the applicant and the Board is executed.

(4) The recipient of a Planning Loan must first receive written approval for any cost increases or changes to the scope of work.

(5) A copy of the document(s) prepared by means of the planning loan shall be submitted to the Division.

R309-700-8. Design Grant or Loan.

(1) A Design Grant or Loan can only be made to a political subdivision ~~[which]~~ ~~[demonstrating[es]]~~ ~~[a]~~ financial hardship ~~[which]~~ ~~[preventing[s]]~~ the completion of project design. For purposes of this Section R309-700-8, project design means engineering plans and specifications, construction contracts, and associated work.

(2) A Design Grant or Loan is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. The Design Grant or Loan must be repaid

to the Board unless the payment obligation is waived by the Board as authorized by 73-10c-4(3)(b).

(3) The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Grant or Loan will be deposited with these other funds into a supervised escrow account at the time the grant or loan agreement between the applicant and the Board is executed.

(4) The recipient of a Design Grant or Loan must first receive written approval from the Board before incurring~~[for]~~ any cost increases or changes to the scope of work.

~~[R309-700-9. Technical Assistance.~~

~~— The Board will establish a fund (or account) into which the proceeds of an annual fee on loans will be placed. These funds will be used to finance technical assistance for eligible water systems.~~

~~— This fund will provide low interest loans for technical assistance and any other eligible purpose as defined by Section 1452 of the Safe Drinking Water Act (SDWA) Amendments of 1996 to water systems that are eligible for loans. Repayment of these loans may be waived in whole or in part (grant funds) by the Board whether or not the borrower is considered for a hardship grant.~~

~~— (1) The Board will establish a fee to be assessed against loans authorized under the Federal SRF Loan Program. The revenue generated by this fee will be placed in a new fund called the "SRF Technical Assistance Fund".~~

~~— (2) The amount will be assessed as a percentage of the Principal Balance of the loan on an annual basis, the same as the annual interest is assessed. The borrower will pay the fee annually when paying the principal and interest.~~

~~— (3) The Board will set / change the amount of the fee from time to time as they determine meets the needs of the program.~~

~~— (4) This fee will be part of the "effective rate" calculated for the loan using Table 2 and Table 3, R309-700. This fee will not be charged in addition to said effective rate. After the effective rate has been calculated for the loan using Table 2 and Table 3, the technical assistance fee will be subtracted from it.~~

~~— (5) The proceeds of the fund will be used as defined above or as modified by the Board in compliance with Section 1452 of the SDWA Amendments of 1996.]~~

R309-700-9[10]. Credit Enhancement Agreements.

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement subject to the criteria in R309-700-5. To provide security for project obligations the Board may agree to purchase project obligations of applicants or make loans to the applicants to prevent defaults in payments on project obligations. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to applicants to properly enhance the marketability of or security for project obligations.

R309-700-10[11]. Interest Buy-Down Agreements.

Interest buy-down agreements may consist of:

(1) A financing agreement between the Board and applicant whereby a specified sum is loaned or granted to the applicant to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

(2) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(3) Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

R309-700-11[12]. Loans.

The Board may make loans to finance all or part of a drinking water project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivisions.

R309-700-12[13]. Project Authorization (Reference R309-700-4(4)).

A project may be "Authorized" for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and ~~s[§]taff~~ feasibility report. The engineering report ~~shall~~must include ~~[the preparation of]~~ a cost effectiveness analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form, plan of study, engineering report, and financial capability assessment are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant).

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that

projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-700-13[14]. Financial Evaluations.

(1) The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

(2) Hardship Grants will be evidenced by a grant agreement.

(3) In providing any form of financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of \$150,000 or less the Board will not require this opinion.

(a) In providing any form of financial assistance in the form of a loan, the Board may purchase either a taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(i) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(ii) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(b) In any other situations, the Board may purchase taxable bonds if it determines, after evaluating all relevant circumstances including the applicant's ability to pay, that the purchase of the taxable bonds is in the best interests of the State and applicant.

(c) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(d) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or interest) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(4) The Board will consider the financial feasibility and cost effectiveness evaluation of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board will generally use these reports to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant (Reference R309-700-9[+0], -10[+1] and -11[+2]). If a project is Authorized to receive a loan, the Board will establish the portion of

the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(5) Normal engineering and investigation costs incurred by the Department of Environmental Quality or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization. If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.

(6) The Board shall determine the date on which the scheduled payments of principal and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system ~~user~~ one year of actual use of the project facilities before the first repayment of principal is required.

(7) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(8) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(9) The Board will not forgive the applicant of any payment after the payment is due.

(10) The Board will require a debt service reserve account be established by the applicant at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Annual reports/statements will be required. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(11) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or interest on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a

technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(12) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% ~~{}~~ or such other amount as the Board may determine~~{}~~ of the total annual debt service.

R309-700-14[45]. Committal of Funds and Approval of Agreements.

After the Board has ~~approved the plans and specifications by the issuance of~~ issued a Plan Approval and ~~has~~ received the appropriate legal documents and other items required by Rule R309-700~~listed on the financial assistance checklist~~, the Board will determine whether the project loan, interest buy-down, credit enhancement, and/or grant meets the conditions of its authorization. ~~If so, the Board will give its final approval~~ loan will be considered by the Board for final approval. The Board will determine whether the project loan, interest buy-down agreement or grant agreement is in proper order on the basis of the previous authorization]. The Executive Secretary or designee may then execute ~~close the loan or credit enhancement~~ the financial assistance agreement if ~~obligations to the Board or other~~ no aspects of the project have ~~not~~ changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down agreement, or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-700-15[46]. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Executive Secretary before execution. The applicant shall notify the Executive Secretary when the project is near completion and request a final inspection. ~~Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Executive Secretary to conduct a final inspection.~~ When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary~~and the applicant~~, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

KEY: loans, interest buy-downs, credit enhancements, hardship grants

[July 1, 2003]2004

Notice of Continuation September 16, 2002

19-4-104

73-10c



Environmental Quality, Drinking Water
R309-705
Financial Assistance: Federal Drinking
Water Project Revolving Loan Program

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 26975
 FILED: 03/01/2004, 13:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed amendment is to clarify the application and project initiation procedure and add Table 2 used to determine the interest rate to more closely match that calculated by Rule R309-700. (DAR NOTE: The proposed amendment to R309-700 is found under DAR No. 26974 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This amendment adds language that clarifies what, if any, costs incurred subsequent to submission of a funding application and prior to execution of a financial assistance agreement are eligible for reimbursement; it adds language allowing the Board to accept other measurements of water users' income where they deem the Tax Commission data insufficient; it clarifies when annual repayments of principal, interest, fees and/or Hardship Grant Assessment commence; it clarifies what must be included in a complete application concerning alternatives considered and justification of chosen project and evaluation of credit enhancement, interest buy-down and loan methods applicable to the project; it provides for minimum public hearing notice and certified result to be submitted to Board; and includes Table 2 and changes in special incentives.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104, and Title 73, Chapter 10c

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--Since the proposed amendments simply clarify certain issues required by the Board at this time and since any changes to the calculated interest rate as a result of inclusion of Table 2 will not add to or reduce the cost of administration by the State, then there will be no increase nor reduction to State Budget as a result of these changes.
- ❖ **LOCAL GOVERNMENTS:** Little to none--Amendments simply clarify costs for which reimbursement is eligible and changes in calculated interest are intended to more closely match that calculated by Rule R309-700.
- ❖ **OTHER PERSONS:** Little to none--Clarification of issues to be addressed by applicants concerning alternatives and justification for the chosen project as well as financial may slightly increase the work load for engineering companies and financial consultants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some applicants may see slightly increased costs from engineers and financial consultants as a result of the clarification of items required from the applicant at the time of application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no detrimental impact on water systems applying for or receiving financial assistance, nor will it adversely impact any of the affiliated businesses such as engineering firms, escrow agents, bond counselors, or financial advisors which provide service to the applicants.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
R309-705-1. Purpose.

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act.

R309-705-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapter 10c, Utah Code.

R309-705-3. Definitions.

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property

condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law. Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income ~~which is~~ less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns, or where the ~~estimated~~established annual cost, including loan repayment costs, of drinking water service ~~for~~for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule[-] and by the Drinking Water Board.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and / or safety of the public / water users.

"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify and / or correct system deficiencies, to help a water system overcome other technical problems.

The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.

"SRF Technical Assistance Fund" means a fund (or account) that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.

R309-705-4. Financial Assistance Methods.

(1) Eligible Activities of the SRF.

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost as defined by 73-10c-2 of the Utah Code or as allowed by 42 U.S.C.A. 300f et seq. Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.

(2) Types of Financial Assistance Available for Eligible Water Systems.

(a) Loans.

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community". Upon application, the Board will make a case by case determination whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must be located in a service area or zip code area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest, fees and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation and a notice of "beneficial occupancy" is given to the general contractor. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion or not later than 30 years after project completion if the community served by the water system is determined to be a disadvantaged community. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be [as] determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act (SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project's funding may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which

when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(d) Technical Assistance.

The Board ~~may~~will establish a fund (or account) into which the proceeds of an annual fee on loans will be placed. These funds will be used to finance technical assistance for eligible water systems.

This fund will provide low interest loans for technical assistance and any other eligible purpose as defined by Section 1452 of the Safe Drinking Water Act (SDWA) Amendments of 1996 to water systems that are eligible for Federal SRF loans. Repayment of these loans may be waived in whole or in part (grant funds) by the Board whether or not the borrower is disadvantaged.

(i) The Board ~~may~~will establish a fee to be assessed against loans authorized under the Federal SRF Loan Program. The revenue generated by this fee will be placed in a new fund called the "SRF Technical Assistance Fund".

(ii) The amount will be assessed as a percentage of the Principal Balance of the loan on an annual basis, the same as the annual interest and hardship grant assessment are assessed. The borrower will pay the fee annually when paying the principal and interest or hardship grant assessments.

(iii) The Board ~~may~~will set / change the amount of the fee from time to time as they determine meets the needs of the program.

(iv) This fee will be part of the "effective rate" calculated for the loan using Table 2, R309-705-6. This fee may be charged in lieu of or in addition to the interest rate or hardship grant assessment, but in no case will the total of the technical assistance fee, the interest rate, and hardship grant assessment exceed the "effective rate". ~~will not be charged in addition to said effective rate. After the effective rate has been calculated for the loan using Table 2, the technical assistance fee will be subtracted from it. The difference will be assessed as the hardship grant assessment or interest rate.]~~

(v) The proceeds of the fund will be used as defined above or as modified by the Board in compliance with Section 1452 of the federal SDWA Amendments of 1996.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" (R309-150) rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

- (iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;
- (iv) Laboratory fees for monitoring;
- (v) Operation and maintenance costs;
- (vi) Projects needed mainly for fire protection.

R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel ~~[, as deemed acceptable by the Drinking Water Board,]~~ to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report ~~[, listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project and financial capability assessment and a history of the applicant's compliance with the SDWA]~~ ~~[as appropriate,]~~ are submitted to the Board. Comments from other interested parties such as an association of governments will also be accepted.

(3) ~~[The staff prepares a]~~ ~~[an]~~ engineering, capacity development analysis, and financial feasibility report ~~is prepared by Division staff on the project]~~ for presentation to the Board.

(4) The Board ~~["Authorizes"]~~ may authorize financial assistance for the project on the basis of the staff's feasibility report ~~[prepared by the staff,]~~ ~~and [The Board then]~~ designate[s] whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approve[s] the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the "effective rate", the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of the public hearing shall be forwarded to the Division of Drinking Water.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) The Board, through its Executive Secretary, shall issue[s], if warranted by conformance to Rules R309-500-560, a Plan Approval for plans and specifications [, if required, and concurs in bid advertisement].

(8) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) ~~If [For]~~ a revenue bond ~~[,]~~ is to be used to secure a loan, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. ~~If [For]~~ a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements will be established after the Board's staff has reviewed and analyzed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to execute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs ~~[-~~ Θ], or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to ~~[,]~~ determine ~~[that]~~ if there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond ~~[must be provided]~~ may be required by the Board insuring [for] the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall execute[issue] the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds ~~[on the open market]~~ and shall notify the Board of the terms of sale. If a credit enhancement agreement is ~~[being]~~ utilized, the bonds ~~[sold on the open market]~~ shall contain the legend required by 73-10c-6(3)(d) of the Utah Code. If an interest buy-down agreement is being utilized, the bonds ~~[sold on the open market]~~ shall bear a legend ~~[which makes reference]~~ referring to the interest buy-down agreement and state[s] that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The ~~[final]~~ closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

R309-705-6. Applicant Priority System and Selection of Terms of Assistance.

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development (financial, technical, or managerial issues needing resolution to avoid EPA intervention).

(e) An Emergency.

The Board will utilize ~~[the format shown in]~~ Table 1 to prioritize loan applicants as may be modified by (a), (b), (c), or (d) above.

TABLE 1
Priority System

Deficiency Description	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or-	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100

Deficiency Description	Points Available
Treatment	
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, [and/or] turbidity standards, <u>or other enforceable drinking water quality standards.</u>	25
B. The required disinfection facilities <u>systems</u> are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
-or-	
Treatment system equipment does not meet demands of UPDWR including the lead and/or copper action levels. <u>[45]20</u>	
-or-	
System equipment is projected to become inadequate without upgrades.	5
Total	<u>80</u> [75]

Deficiency Description	Points Available
Storage	
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or-	
System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or-	
Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75

Deficiency Description	Points Available
Distribution	
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or-	
Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75

Emergencies

Upon the Board finding of an emergency as required by R309-705-9. Total 100

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:

* Rate Factor = (Average System Water Bill/Average State Water Bill)

** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI) as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

TABLE 2
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefitting connection	13
B. \$501 to \$1,500	11
C. \$1,501 to \$2,000	9
D. \$2,001 to \$3,000	6
E. \$3,001 to \$5,000	3
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. PRIVATE SECTOR OR OTHER FUNDING, BUT NOT OWN CONTRIBUTION (SELECT ONE)	
A. A reasonable search for it has been made without success	10
B. Will provide greater than 50% of project cost	10
C. Will provide 25 to 49% of project cost	8
D. Will provide 10 to 24% of project cost	5
E. Will provide 1 to 9% of project cost	3
F. Has not been investigated	0
3. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	15
B. 71 to 90% of State Median AGI	12
C. 91 to 115% of State Median AGI	9
D. 116 to 135% of State Median AGI	6
E. 136 to 160% of State Median AGI	3
F. Greater than 161% of State Median AGI	0
4. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	12
B. 10 to 25% of project funds	9
C. 5 to 9% of project funds	6
D. 2 to 4% of project funds	3
E. Less than 2% of project funds	0
5. ABILITY TO REPAY LOAN	
5A. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
a. Greater than 2.50% of local median AGI	15
b. 2.01 to 2.50% of local median AGI	11
c. 1.51 to 2.00% of local median AGI	7
d. 1.01 to 1.50% of local median AGI	3
e. 0 to 1.00% of local median AGI	0
5B. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)	
a. Greater than 12% of fair market value	15
b. 8.1 to 12% of fair market value	12
c. 4.1 to 8.0% of fair market value	9
d. 2.1 to 4.0% of fair market value	6
e. 1.0 to 2.0% of fair market value	3
f. Less than 1% of fair market value	0

6. SPECIAL INCENTIVES

Applicant:

A. is using a master plan which includes water management and conservation	4
B. has a replacement fund receiving annual deposits of 5% of drinking water budget	4
C. is creating or enhancing a regionalization plan	4
D. has a rate structure encouraging conservation	4
E. has received a Quality Community designation	4
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100
<i>[Special Hardship Grant Assessment Rate Reduction Incentives]</i>	
1. Project will include creation or enhancement of, or compliance with a regionalization plan if regionalization is possible in the judgement of the Board. If not, the points will not be assigned and the total possible points will be 75.	25
2. Applicant has, within the last 5 years, developed and implemented a water master plan	25
3. Applicant has a 5 year history of having implemented a replacement or depreciation fund, amounting to 5% of the drinking water budget for O and M, and debt service.	15
4. Applicant has a written emergency response plan.	10
5. Project funding contributed by applicant meets or exceeds 20% of estimated project cost	10
6. Applicant has established a rate structure to encourage water conservation	15
TOTAL POSSIBLE POINTS	100

R309-705-7. Project Authorization.

A project may receive written authorization~~[be "Authorized"]~~ for ~~[a loan, credit enhancement agreement, interest buy-down agreement,]~~ financial or technical assistance from~~[in writing by]~~ the Board following submission and favorable review of an application form, engineering report (if required), capacity development (including financial capability) assessment and ~~[S]~~ staff feasibility report. The engineering report shall include a cost effective analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize financial assistance~~[a loan]~~ for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This

Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-705-8. Financial Evaluations.

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of \$150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; or a secured promissory note provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment, or a fee (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules [which would] exceeding the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board ~~[then]~~ administrative costs will not be charged to the project. However, if the Board Authorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system ~~[user]~~ up to one year of actual use of the project facilities before the first repayment of principal is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% ~~[f]~~ ~~[or such other amount as the Board may determine]~~ of the total annual debt service.

(15) The applicant must have adopted a ~~[A]~~ Water Management and Conservation Plan prior to executing the loan agreement ~~[will be required]~~.

R309-705-9. Emergency Assistance.

(1) Authority: Title 73, Chapter 10c of State Statute and the SDWA Amendment of 1996 give the Board authority to provide emergency assistance to drinking water systems.

(2) Eligibility: Generally, any situation occurring as defined in Section R309-705-3 would qualify for consideration for emergency funding. However, prior to authorizing funds for an emergency, the Board may consider one or more of the various factors listed below:

(i) Was the emergency preventable? Did the utility / water system have knowledge that this emergency could be expected? If not. Should it have been aware of the potential for this problem? Did its management take reasonable action to either prevent it or to be as prepared as reasonably possible to correct the problem when it occurred (prepared financially and technically for the event causing the problem)?

(ii) Has the utility / system established a capital improvement replacement reserve fund? Has the utility / system been charging reasonably high rates in order to establish a reserve fund to cover normal infrastructure replacement and emergencies?

(iii) Is the community a disadvantaged (hardship) community?

(iv) Is the potential for illness, injury, or other harm to the public or system operators sufficiently high that the value of providing financial assistance outweighs other factors that would preclude providing this assistance. (Even though the State does not have any legal obligation to provide financial assistance to help correct the problem.).

(3) Requirements for the Applicant: The applicant will be required to do the following as a condition of receiving financial assistance to cope with a drinking water emergency:

(i) To the extent feasible, the utility / system shall first use its own resources, e.g. capital improvement replacement fund, to correct the problem.

(ii) If the utility / system is not placing funds into a reserve fund on a regular basis and / or is charging relatively low water rates it shall be required to examine its current rate structure and policies for placing funds into a reserve account. The Board may require the utility / system to establish a reserve account and / or to revise its rate structure (increasing its rate) as a condition of the loan.

(iii) The Board may place other requirements on the utility / system.

(4) Financial Agreements, Bonding, etc: The State will work with the Applicant to help secure obligating documents. For example, the Board:

(i) Could waive the 30-day notice period, if legally possible.

(ii) Could accept a generic bond.

(iii) Could accept an unsecured loan or bond.

(5) Funding Alternatives: An Applicant may be authorized to receive a loan by any of the financial assistance methods specified in R309-705-4 for funding an emergency project. The Board may set and revise the methodology and factors to be considered when determining the terms of financial assistance it provides including assigning a priority it deems appropriate. The terms of the loan, including length of repayment period, interest or hardship grant assessment, and principal forgiveness (grant) or repayment waivers will be determined at the time the emergency funding is authorized.

(6) Funding Process - The Board must find that an emergency exists according to the criteria in R309-705-9(2). It is anticipated that under normal emergency conditions time restraints will not allow a request for emergency funding to be placed on the agenda of a regularly scheduled Board meeting or adoption and advertisement of a project

priority list. Therefore, the following procedures will be followed in processing a loan application for emergency assistance:

(i) Division staff will evaluate each application for emergency funding according to the criteria listed in R309-705-9(2). Staff will solicit recommendations from the LHD and District Engineer about the proposed project to mitigate the emergency. Staff will submit a report of its findings to the Board Chairperson or designee.

(ii) The Board Chairperson or designee will arrange for a timely meeting of the Board to consider authorizing assistance for the emergency. This meeting may be conducted by telephone.

R309-705-10. Committal of Funds and Approval of Agreements.

After the Board has ~~approved the plans and specifications by the issuance of~~ issued a Plan Approval, the loan, credit enhancement, interest buy-down, or hardship grant will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute ~~final approval of~~ the loan or credit enhancement agreement if ~~obligations to the Board or other~~ no aspects of the project have ~~not~~ changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-705-11. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Executive Secretary before execution. ~~Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Executive Secretary to conduct a final inspection.~~ When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary ~~and the applicant~~, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

R309-705-12. Compliance with Federal Requirements.

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) Applicant(s) shall require its contractors to comply with federal provisions for disadvantaged business enterprises and exclusions for businesses under suspension and/or debarment. Any bidder not complying with these requirements shall be considered a non-responsive bidder.

(3[2]) As required by Federal Code, applicants may be subject to the following federal requirements (all assessments shall consider the impacts of the project twenty (20) years into the future):

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
Clean Air Act, Pub. L. 84-159, as amended
Coastal Barrier Resources Act, Pub. L. 97-348
Coastal Zone Management Act, Pub. L. 92-583, as amended
Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898
 Floodplain Management, Executive Order 11988 as amended by
 Executive Order 12148
 Protection of Wetlands, Executive Order 11990
 Farmland Protection Policy Act, Pub. L. 97-98
 Fish and Wildlife Coordination Act, Pub. L. 85-624
 National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-
 190
 National Historic Preservation Act of 1966, PL 89-665, as
 amended
 Safe Drinking Water Act, Pub. L. 93-523, as amended
 Wild and Scenic Rivers Act, Pub. L. 90-542, as amended
 Age Discrimination Act of 1975, Pub. L. 94-135
 Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
 Section 13 of the Federal Water Pollution Control Act
 Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
 Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112
 (including Executive Orders 11914 and 11250)
 The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies
 only to the capitalization grant recipient)
 Equal Employment Opportunity, Executive Order 11246
 Women's and Minority Business Enterprise, Executive Orders
 11625, 12138 and 12432
 Section 129 of the Small Business Administration Reauthorization
 and Amendment Act of 1988, Pub. L. 100-590
 Anti-Lobbying Provisions (40 CFR Part 30)
 Demonstration Cities and Metropolitan Development Act of 1966,
 Pub. L. 89-754, as amended
 Procurement Prohibitions under Section 306 of the Clean Water
 Act and Section 508 of the Clean Water Act, including Executive Order
 11738, Administration of the Clean Air Act and the Federal Water
 Pollution Control Act with Respect to Federal Contracts, Grants, or
 Loans
 Uniform Relocation and Real Property Acquisition Policies Act,
 Pub. L. 91-646, as amended
 Debarment and Suspension, Executive Order 12549
 Accounting procedures, whereby applicants agree to maintain a
 separate project account in accordance with Generally Accepted
 Accounting Standards and Utah State Uniform Accounting
 requirements

KEY: SDWA, financial assistance, loans
[January 1], 2004
Notice of Continuation September 16, 2002
19-4-104
73-10c

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1-5 **State Plan**

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 26955
 FILED: 02/24/2004, 11:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change updates the incorporation of the Utah Medicaid State Plan.

SUMMARY OF THE RULE OR CHANGE: This rule change updates the incorporation by reference of the Utah Medicaid State Plan into Rule R414-1 to the plan effective December 31, 2003. There have been three State Plan Amendments approved since this rule was last amended, which were the result of increased Legislative appropriations. State Plan Amendment 03-009-UT Speech Pathology Services extends speech pathology services to non-pregnant adults ages 21 and older. State Plan Amendment 03-012-UT Audiology Services extends audiology services to non-pregnant adults ages 21 and older. State Plan Amendment 03-017-UT Aged and Disabled Spenddown Level adds an income deduction for aged, blind and disabled individuals who qualify as medically needy that has the effect of allowing them to spenddown to 100% of the federal poverty guideline. Each of these changes is also implemented by separate, specific rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah State Medicaid Plan, December 31, 2003

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** State Plan Amendment 03-009-UT Speech Pathology Services cost \$5,667 federal dollars and \$2,322 in state dollars in federal FY 2003 and will cost \$22,667 and \$8,990 in state funds in federal FY 2004. State Plan Amendment 03-012-UT Audiology Services cost \$95,000 in federal dollars and \$38,935 in state dollars in federal FY 2003 and will cost \$380,000 in federal funds and \$152,150 in state funds in federal FY 2004. The costs for State Plan Amendment 03-017-UT Aged and Disabled Spenddown Level were explained in DAR File No. 26202, published on May 15, 2003, and in DAR File No. 26781, published on December 1, 2003. All of these costs are handled within appropriations for the state Medicaid program.

❖ **LOCAL GOVERNMENTS:** There is no cost to local governments because local governments do not operate any of the programs approved since this rule was last amended.

❖ **OTHER PERSONS:** Medicaid recipients will receive additional services equal to the estimated costs to the state budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Medicaid recipients will receive additional services equal to the estimated costs to the state budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: H.B. 126 passed in the 2003 Legislative session and which took effect May 5, 2003, deleted a reference in Title 26, Chapter 18, which previously authorized implementation of the Utah Medicaid program through policy rather than rule. In order to comply with HB 126, each calendar quarter the Utah Medicaid program files a rulemaking to incorporate the current Medicaid State Plan by

reference. The state plan and rule changes reflected in this incorporation have a positive fiscal impact on businesses that accept Medicaid clients. Scott D. Williams, MD (DAR Note: H.B. 126 is found at UT L 2003 Ch 324, and was effective May 5, 2003.)

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-5. State Plan.

(1) As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

(2) The department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program, in effect ~~May~~ December 1, 2003, which is incorporated by reference.

KEY: Medicaid

~~November 26, 2003~~ 2004

Notice of Continuation April 30, 2002

26-1-5

26-18-1



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-49** Dental Service

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26964

FILED: 02/27/2004, 11:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with H.B. 126 (2003), which requires that reimbursement methodologies be put into rule. Also, the mailing address listed for public access to Medicaid Information needs to be updated. This address is listed at the end of Section R414-49-5. (DAR Note: H.B. 126 is found at UT L 2003, Ch 324, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The method for establishing fees through select American Dental Association (ADA) dental codes is added to this rule. This method requires that payments be based on the established fee schedule for which the Department pays the lower of the amount billed or the rate on the schedule. It also requires that the amount billed cannot exceed the usual and customary charges for private pay patients. In addition, the rule confirms that adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services. Finally, this rule includes an updated change to the address used for public access to Medicaid Information.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no impact to the state budget associated with this rulemaking because the program was previously implemented by policy and now needs to be implemented pursuant to H.B. 126.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented pursuant to H.B. 126.
- ❖ **OTHER PERSONS:** There is no budget impact to other persons as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented pursuant to H.B. 126.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the program was previously implemented by policy and now needs to be implemented pursuant to H.B. 126.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Reimbursement methodologies for the Medicaid dental program are added to the existing dental rule. There is not impact on business. Scott D. Williams, MD.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-49. Dental Service.

R414-49-1. Introduction and Authority.

(1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.

(2) Dental services are authorized by 42 CFR, October, 1995 ed., sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Adult" means a person who has attained the age of 21.

(2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.

(3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.

(4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.

(5) "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to categorically and medically needy clients who are ages 20 and younger or who are pregnant. Dental services to non-pregnant adults ages 21 and older are limited to emergency services only.

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for adults and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only for either a child or an adult.

(b) A limited problem-focused oral evaluation for a child or an adult.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Adult: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for adults.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth, or permanent second molars for adults.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions for adults and children.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Adult: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Services requiring prior authorization or those with other limitations are listed in the Medicaid Dental Provider Manual. This manual is a public document published by the Division of Health Care Financing. A copy of the manual may be obtained by contacting Medicaid Information. In the Salt Lake City area, call 538-6155. In Utah, Idaho, Wyoming, Colorado, New Mexico, Arizona, and Nevada, call toll-free 1-800-662-9651. From other states, call 1-801-538-6155.

A copy may also be obtained by writing to:

~~[BUREAU OF MEDICAID OPERATIONS~~

~~Box 142911~~

~~— SALT LAKE CITY, UT 84114-2911]DEPARTMENT OF HEALTH~~

~~Division of Health Care Financing~~

~~P.O. Box 143106~~

~~Salt Lake City, UT 84114-3106~~

R414-49-6. Reimbursement.

(1) Reimbursement for Dental Services is through select ADA dental codes which are based on an established fee schedule unless a lower amount is billed. The Department pays the lower of the amount billed and the rate on the schedule.

(2) The amount billed cannot exceed usual and customary charges for private pay patients. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid

[~~July 2, 2003~~]2004

Notice of Continuation December 20, 1999

26-1-5

26-18-3

▼ _____ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-305-3** Spousal Impoverishment Resource Rules for Married Institutionalized Individuals

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26965

FILED: 02/27/2004, 11:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to extend the time period for transferring assets from the institutionalized client to the community spouse.

SUMMARY OF THE RULE OR CHANGE: The language in this rulemaking changes the protected period of 90 days after eligibility is established to the next regularly scheduled redetermination for the Medicaid client. This change benefits Medicaid clients because the interim for regularly scheduled redeterminations is substantially longer than 90 days.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no impact to the state budget as a result of this rulemaking because once eligibility is established, the client is merely allowed more time to transfer assets to the community spouse.

❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this rulemaking because once eligibility is established, the client is merely allowed more time to transfer assets to the community spouse.

❖ **OTHER PERSONS:** There is no budget impact to other persons as a result of this rulemaking because once eligibility is established, the client is merely allowed more time to transfer assets to the community spouse.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as a result of this rulemaking because once eligibility is established, the client is merely allowed more time to transfer assets to the community spouse.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule affords Medicaid eligible institutionalized spouses additional time to transfer assets to a spouse still residing in the community. The assets that can lawfully be transferred is not changed. No fiscal impact on business. Scott D. Williams, MD

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

HEALTH

HEALTH CARE FINANCING,

COVERAGE AND REIMBURSEMENT POLICY
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-305. Resources.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) The Department adopts Section 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The resource limit is \$2,000.

(3) The Department shall determine the joint owned resources of married couples as available to each other. One half of the joint owned resources shall count towards the institutional client's resource eligibility determination.

(4) When a client is unable to comply with spousal impoverishment rules and claims undue hardship because of an uncooperative spouse or because the spouse cannot be located, assignment of support rights shall be done by signing the Form 048.

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:

(a) The client completes the Form 048.

(b) The client will not be able to get the medical care needed without Medicaid.

(c) The client is at risk of death or permanent disability without institutional care.

(6) The client may be eligible for Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client signs the Form 048.

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1999.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, ~~[of up to 90 days]~~ lasting until the time of the next regularly scheduled eligibility redetermination is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client.

KEY: Medicaid

~~[July 2, 2003]~~ **2004**

**Notice of Continuation January 31, 2003
 26-18**

▼ ————— ▼

**Health, Health Systems Improvement,
 Licensing
 R432-100-17
 Perinatal Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26954

FILED: 02/20/2004, 13:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change updates the adoptions by reference of the Guideline for Perinatal Services, Fifth Edition and the Guidelines for Construction and Equipment of Hospital and Medical Facilities, 2001 Edition.

SUMMARY OF THE RULE OR CHANGE: The changes require support personnel to be available according to the designated level and equipment for oxygen and resuscitation to be available for both mother and newborn. The rule is reorganized for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Guidelines for Perinatal Care, Fifth Edition; Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 Edition.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There should be a minimum impact to adopt the current guidelines for a state owned and operated facility since the Fifth Edition reflects the current practice. The Department will have approximately \$350 cost to mail the revised rules to the affected providers.

❖ LOCAL GOVERNMENTS: There should be a minimum impact to adopt the current guidelines for a local government owned and operated facility since the Fifth Edition reflects the current practice and the smaller hospitals typically do not operate an intensive care unit for their nurseries.

❖ OTHER PERSONS: There should not be an impact to adopt the current guidelines for privately owned and operated facilities since the Fifth Edition reflects the current practice and the majority of the hospitals are accredited by the Joint Commission that requires the standard of care and designation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The hospital cost should be cost neutral since they are allowed to self-designate their level of nursery service and staff accordingly

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule making describes the standards for hospitals who provide perinatal services and adopts the new Guidelines for Perinatal Care, Fifth Edition. This is already the standard of care in most regulated facilities. Fiscal impact on regulated facilities should be minimal. Scott Williams, M.D.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/16/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R432. Health, Health Systems Improvement, Licensing.

R432-100. General Hospital Standards.

R432-100-17. Perinatal Services.

(1) Each hospital shall comply with the requirements of this section and shall designate its capability to provide perinatal (antepartum, labor, delivery, postpartum and nursery) care in accordance with Level I basic, Level II specialty, or Level III sub-specialty or tertiary care as described in the Guidelines for Perinatal Care, Fifth Edition and the Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 Edition, which is incorporated by reference.

(a) ~~A~~ qualified member of the hospital staff shall provide administrative, medical and nursing direction and oversight for perinatal services ~~[shall be provided by a person appointed and authorized by the hospital administrator]~~ according to each hospital's designated level of care, Level I, II or III.

(b) ~~Medical direction for perinatal services shall be provided by a qualified member of the medical staff.~~

~~(c) Each hospital shall establish and implement security protocols for perinatal patients.~~

~~(d)~~ A qualified registered nurse shall be immediately available at all hours of the day and staff-to-patient ratios shall be in accordance with those recommended in the designated level of care.

(c) Support personnel shall be available to the perinatal care service according to each hospital's designated level of care.

(2) Each hospital shall establish and implement security protocols for perinatal patients.

~~(3)~~ The perinatal department shall include facilities and equipment for antepartum, labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted according to hospital policy.

~~(3)~~ Each hospital shall have ~~[access to]~~ at least one surgical suite for operative delivery.

~~(a)~~ Equipment and supplies shall be immediately available and maintained for the mother and newborn, including:

(i) furnishings suitable for labor, birth, and recovery;

(ii) oxygen with flow meters and masks or equivalent;

(iii) mechanical suction and bulb suction ~~[immediately available];~~

(iv) resuscitation equipment;

(v) emergency medications, intravenous fluids, and related supplies and equipment;

(vi) a device to assess fetal heart rate;

(vii) equipment to monitor and maintain the optimum body temperature of the newborn;

(viii) a clock capable of showing seconds;

(ix) an adjustable examination light; and

(x) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit must be capable of administering oxygen and suctioning.

~~(b)~~ The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-17(3)~~(a)~~(d).

~~(5) [Each hospital shall comply with the following provisions:~~

~~(a) No attempt shall be made to delay the imminent, normal birth of a child.~~

~~(b) A prophylactic solution approved by the Department of Health shall be instilled in the eyes of the infant within three hours of birth in accordance with R386-702-9.~~

~~(c) Metabolic screening shall be performed in accordance with State Health Laboratory rules developed pursuant to Section 26-10-6.~~

~~(6) Each hospital shall designate its capability to provide nursery care in accordance with the following levels of nursery care as described in the Guidelines for Perinatal Care, Fourth Edition and The Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-1993 Edition.] The nursery shall include facilities and equipment according to its designated level of care: Level I - Basic Newborn Care; Level II - Specialty Continuing Care; and Level III - Sub-specialty or Tertiary Newborn Intensive Care including an individual bassinet for each infant; with space between bassinets as follows:~~

(a) Level I Basic: Full Term or Well Baby Nursery 24 inches between bassinets;

(b) Level II Specialty: Continuous Care Nursery 50 square feet per bassinet and four feet between bassinets for Continuing Care nurseries;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery 100 square feet per bassinet and four feet between bassinets.

~~[(7) The nursery area shall provide each infant with separate equipment and supplies for bathing, dressing, and handling.~~

~~— (a) There shall be equipment and supplies in or near the nursery that include:~~

~~— (i) an individual bassinet for each infant;~~

~~— (ii)(d) accurate scales; and~~

~~[(iii)](e) a [reliable] wall thermometer;[-]~~

~~— (b) Temperatures between 70-80 degrees F. shall be maintained in the nursery;]~~

~~[(e)6] The following equipment and supplies shall be available:~~

~~— (a) [There shall be] an individual thermometer, or one with disposable tips, for each infant[-];~~

~~[(d)1b] [A] a supply of medication shall be immediately available for emergencies[-];~~

~~[(e) The following equipment and supplies shall be available:~~

~~— (i)(c) a covered soiled-diaper container with removable lining;~~

~~[(ii)1d] a linen hamper with removable bag for soiled linen other than diapers;~~

~~[(iii)1e] a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements;~~

~~[(iv)1f] oxygen, oxygen equipment, and suction equipment; and~~

~~[(v)1g] an oxygen concentration monitoring device.~~

~~(7) Temperature shall be maintained between 70-80 degrees Fahrenheit in the nursery area.~~

~~— (8)(f) Infant formula storage space shall be available that conforms to the manufacturer's recommendations.[~~

~~— (g) Only single-use bottles shall be used for newborn feeding.~~

~~[(8)2] A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.~~

~~(a) Isolation facilities shall be used for any infant who:~~

~~(i) has a communicable disease;~~

~~(ii) is delivered of an ill mother infected with a communicable disease;~~

~~(iii) is readmitted after discharge from a hospital; or~~

~~(iv) is delivered outside the hospital.~~

~~(b) There shall be separate hand washing facilities for the isolation area.~~

~~(10) Each hospital shall comply with the following provisions:~~

~~— (a) No attempt shall be made to delay the imminent, normal birth of a child;~~

~~— (b) A prophylactic solution in accordance with R386-702-9 shall be instilled in the eyes of the infant within three hours of birth;~~

~~— (c) Metabolic screening shall be performed in accordance with Section 26-10-6 and R398-1; and~~

~~— (d) A newborn hearing screening shall be performed in accordance with R398-2.~~

KEY: health facilities

[March 13, 2003]2004

Notice of Continuation October 16, 2002

26-21-2.1

26-21-5

26-21-20



Insurance, Administration R590-86 Filing of Life and Disability Forms and Rates

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26978

FILED: 03/01/2004, 17:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because it has been rewritten in the form of three rules, Rule R590-226, Submission of Life Insurance Filings; Rule R590-227, Submission of Annuity Filings; and Rule R590-228, Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings. (DAR NOTE: The proposed new rules of R590-226 (DAR No. 26951), R590-227 (DAR No. 26952), and R590-228 (DAR No. 26950) were published in the March 1, 2004, issue of the Utah State Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed because it has been rewritten in the form of three new rules; Rule R590-226, Rule R590-227, and Rule R590-228. The requirements in Rule R590-86 are still the same in the new rules. They have just been separated according to type of insurance. This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-21-201, and 31A-30-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no change in the state's budget as a result of this repeal. The work load of the Insurance Department will not change nor will the revenue from the filing fees change. Therefore, there will be no cost, or little cost, because the filing requirements of this rule still exist.

❖ **LOCAL GOVERNMENTS:** The repeal of this rule will have no impact on local governments as a result of this rule.

❖ **OTHER PERSONS:** The repeal of this rule will have very little, if any, fiscal impact on life insurers doing business in Utah. The three rules replacing this one will contain the same filing requirements except that the cover letter required in Rule R590-86 will no longer be required. The elimination of this requirement will save someone in the insurance company a little time but should not result in the elimination of a position. As a result, there should be no cost savings shifted to consumers of life insurance products.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have very little, if any, fiscal impact on life insurers doing business in Utah. The three rules replacing this one will contain the same filing requirements except that the cover letter required in Rule R590-86 will no longer be required. The elimination of this requirement will save someone in the insurance company a little time but should not result in the elimination of a position. As a result, there should be no cost savings shifted to consumers of life insurance products.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule will have no fiscal impact on Utah businesses since the terms and provisions of the rule are being implemented in the three rules that replace this one.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

[R590-86. Filing of Life and Disability Forms and Rates.

R590-86-1. Authority.

— This rule is promulgated by the insurance commissioner pursuant to the general authority to adopt a rule granted under Subsection 31A-2-201(3) and the more specific rulemaking authority granted under Section 31A-21-201 and Subsection 31A-30-106(1)(k).

R590-86-2. Purpose.

— This rule is issued in order to implement Sections 31A-21-201, 31A-22-602, 31A-22-605, 31A-22-807 and Chapter 30 of Title 31A. It is essential that each filing submitted to the department be accurate in detail and complete with the required documents in order for the filing to be processed in a timely and efficient manner. This rule sets forth the requirements for filing life and disability forms and rates for use in the State of Utah.

R590-86-3. General Filing Requirements.

— A. Form filings. All individual and group life, annuity, and disability forms must be filed with this department. No form may be used prior to filing. Only one copy of the form is required. Each form

submitted for filing shall be identified by a form number in an accompanying cover letter or on an attached list. All submitted forms must be in printer's proof format, and the form number must be printed on the form. The proper disability or life transmittal form must be included with each submission. Cover letters shall be in duplicate and must concisely describe each form. Included in the description shall be:

— 1. the purpose of the form, the title, the benefits and provisions of the form including an explanation of any change in benefits or premiums which occur while the contract is in force. Include in the description any riders, endorsements or options that may be added to the form;

— 2. the method of marketing, for example, mass merchandised through mass media, individually issued through licensed agents, association membership, franchise membership, union membership, or other method;

— 3. market intended, the issue ages, particularly note any specialized market;

— 4. an explanation of any deviation from normal underwriting, for example, medical, nonmedical, guaranteed issue, simplified application, or other deviation; and

— 5. if the filing includes only riders, endorsements or applications, describe the effect of the form on the base policy and identify the base policy, including form numbers and dates filed in Utah. Also describe any change in the marketing.

— B. Rate filings.

— 1. Rates for individual disability policies, riders or endorsements must be filed, excluding individual policies subject to Chapter 30 that comply with Rule R590-167. Any rates for these forms must also be filed in accordance with the requirements of Rules R590-85 "Filing of Rates for Individual Disability Insurance Forms and Individual and Group Medicare Rates," R590-146 "Medicare Supplement Insurance Minimum Standards," and R590-148 "Long Term Care Insurance Rule," in addition to the requirements of this rule.

— Each disability rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the loss ratio as required by Rules R590-85, R590-146 and R590-148. The rate filing must be in compliance with Utah laws and rules and the benefits must be reasonable in relation to premiums. In addition, these calculations must be accompanied by a certification signed by a qualified actuary who certifies that the calculations were made according to formulas that, to the best of his knowledge, satisfy legal minimum requirements of the State of Utah. Refer to Bulletin 92-4(b), "Procedures for the Submission of Disability Form and Rate Filings."

— 2. Credit life and credit disability forms and rates must be in compliance with Utah laws and rules and the benefits must be reasonable in relation to premiums. The filing must be submitted in accordance with the requirements of Rule R590-91, "Credit Life and Disability Insurance."

— 3. The rates for any small employer or individual policy to which 31A-30-104 applies, must comply with the requirements of Rule R590-167, "Individual and Small Employer Health Insurance Rule."

— C. Filing fees. Each form or rate submitted must be accompanied by the appropriate filing fee. Retaliatory filing fees are due at the time of submission. The retaliatory fee is the greater of:

— (1) the Utah filing fee, or

— (2) the filing fee that would be payable to the company's domiciliary state by a Utah company filing the same form or rate. Refer to Section 31A-3-401.

— D. Domiciliary approval. For non-domestic companies each form and rate submitted to this department for filing must have been previously filed with and reviewed by the domiciliary state. If, in the domiciliary state, the form is deemed filed, exempt from filing, filed for informational purposes, or if the form is not intended for marketing in the domiciliary state, then alternate information is required as follows:

- 1. a list of all states to which the form, rate, or both have been filed, together with any state actions to date on the forms and rates; and
- 2. an explanation of why the form is not intended for marketing in the domiciliary state and any points of conflict between the form, rate, or both and domiciliary state laws or regulations.

— E. Actuarial Filings.

— 1. A signed actuarial memorandum is required with all credit life and disability filings and all life and annuity forms which are subject to "The Standard Nonforfeiture Law for Life Insurance," "The Standard Nonforfeiture Law for Individual Deferred Annuities," and "The Standard Valuation Law," Sections 31A-22-408, 31A-22-409, and Title 31A, Chapter 17, Part 5 respectively. The memorandum must specify the mortality and morbidity tables, interest rates, and methods used in calculating nonforfeiture values and reserves, together with an actuarial demonstration of compliance showing methods used to calculate these values.

— 2. All individual disability policy forms, riders, or endorsements affecting benefits subject to Section 31A-22-602, must include a signed actuarial memorandum including information as required by Utah Rule R590-85, "Filing of Rates for Individual Disability Insurance Forms and Individual and Group Medicare Rates." Individual policies subject to Chapter 30 are excluded from this requirement.

— 3. An actuarial certification as described in Rule R590-167, "Individual and Small Employer Health Insurance Rule", must be filed for any small employer or individual policy to which 31A-30-104 applies.

— F. Policy Summary.

— 1. Life. Each policy form which is required to be issued with a Policy Summary, entitled "Statement of Policy Cost and Benefit Information," as required by Rule R590-79, "Life Insurance Disclosure," must file the Policy Summary with the submission. Each policy form which is an illustrated form as defined in Rule R590-177, Life Insurance Illustrations, must file an illustration with the submission in accordance with the requirements of R590-177.

— 2. Disability. Each policy form which is required to be issued with a Policy Outline of Coverage as required by Rule R590-126, "Individual and Franchise Disability Insurance, Minimum Standards," Rule R590-146, "Medicare Supplement Insurance Minimum Standards," and Rule R590-148, "Long Term Care Insurance Rule," must file the Policy Outline with the submission.

— G. Application. Any policy form that requires a copy of an application to be attached when issued shall be submitted with the application form attached.

— H. Sample information. All blank spaces of each form must be filled in and completed with hypothetical data to indicate the purpose and use of the form.

— I. Group Information. Every group filing must identify the type of group as defined by Sections 31A-22-502 through 508, and 701. Any group which does not clearly meet the definitions of Sections 31A-22-502 through 508, and 701, is subject to Section 31A-22-509. Approval for these groups, subject to 31A-22-509, must be obtained from the commissioner prior to the submission of any form filing. A copy of the group approval letter must accompany all form filings for groups subject to Section 31A-22-509.

R590-86-4. Filing Process.

— All form and rate submissions will be handled in accordance with the procedures described in the disability filing Bulletin 96-2, and the life filing Bulletin 96-1, or any replacements. Refer to each respective filing bulletin for specific instructions for submitting form and rate filings and for a sample of the required transmittal form.

R590-86-5. Penalties.

— Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-86-6. Severability.

— If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: insurance law

January 1, 1997

Notice of Continuation April 23, 2002

31A-21-201

31A-30-106]



Labor Commission, Safety **R616-2-3** Safety Codes and Rules for Boilers and Pressure Vessels

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26967

FILED: 02/27/2004, 12:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to adopt the yearly Addenda for both the American Society of Mechanical Engineers (ASME) Power Piping Code B31.1a and the National Board Inspection Code (NBIC) NB-23.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates by reference the 2002 addenda to the (2001) ASME Power Piping Code B31.1a and the 2003 addendum to the NBIC NB-23.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 34A-7-102(1) and 34A-7-103(6)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASME section B31.1a 2002 Addenda, date of issue September 20, 2003; and NBIC NB-23 Addendum, date of issue December 31, 2003

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no cost or savings to the state budget. The Safety Division has previously purchased the Codes which include the cost of annual addenda. The provisions of the addenda do not require any additional expense for administration or enforcement. As to the impact of the addenda on the state's cost to own or operate boiler/pressure vessels, since the addenda contains only editorial changes there should be no decrease or increase in the cost to state government.

❖ **LOCAL GOVERNMENTS:** As to the impact of the addenda on local government, since the addenda contains only editorial changes there should be no decrease or increase in cost to local government.

❖ **OTHER PERSONS:** As to the impact of the addenda on other persons, since the addenda contains only editorial changes there should be no decrease or increase in cost to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These addenda will not increase compliance costs for affected persons, i.e., manufactures or owner/operators of boilers and pressure vessels. Since the addenda contains only editorial changes there should be no decrease or increase in compliance cost to other persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The primary purpose of the yearly addenda is to refine and clarify existing standards. Any changes imposed by the addenda have, for the most part, already been incorporated in the practices of the boiler and pressure vessel industry. Consequently, the Commission does not expect the addenda to impose any fiscal burden on business.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: R Lee Ellertson, Commissioner

R616. Labor Commission, Safety.**R616-2. Boiler and Pressure Vessel Rules.****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 (2001).

1. Section I Rules for Construction of Power Boilers published July 1, 2001 and 2003 Addenda published July 1, 2003.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2001 and 2003 Addenda published July 1, 2003.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2001 and 2003 Addenda published July 1, 2003.

B. Power Piping ASME B31.1 (2001), issued December 10, 2001 and ASME section B31-1a 2002 Addenda, issued September 20, 2003.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2001) issued August 2001; the (2001) addenda, issued December 31, 2001; and the (2002) addenda, issued December 31, 2002; and the (2003) addenda, issued December 31, 2003.

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); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

KEY: boilers, certification, safety

[January 1,]2004

**Notice of Continuation January 10, 2002
34A-7-101 et seq.**

▼ ————— ▼

Labor Commission, Safety **R616-3-3** Safety Codes for Elevators

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26966

FILED: 02/27/2004, 12:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to adopt the yearly Addenda for the American Society of Mechanical Engineers (ASME) A17.1 Elevators and Escalators and the 2003 International Building Code (IBC).

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates by reference the 2003 addenda to the 2002 ASME A17.1 and also incorporates by reference the 2003 International Building Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-101 et seq.

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASME A17.1 2000 with 2003 Addenda issued May 30, 2003 and effective November 30, 2003; and International Building Code 2003 effective January 1, 2004.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Safety Division has purchased the 2003 IBC Code and has previously purchased the ASME A17.1 code which include the cost of the annual addenda. The provisions of the addenda do not require any additional expense for administration or enforcement. The IBC has been adopted by the State of Utah Department of Commerce and is only used as a reference code by the Labor Commission.
- ❖ LOCAL GOVERNMENTS: Since the 2003 addenda contains only editorial changes there should be no decrease or increase in cost to local government.
- ❖ OTHER PERSONS: Since the 2003 addenda contains only editorial changes there should be no decrease or increase in cost to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This addenda will not increase compliance costs for affected persons, i.e., manufacturers or owner/operators of elevators and escalators. Since the 2003 ASME A17.1 addenda contains only editorial changes there should be no decrease or increase in compliance cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The primary purpose of the yearly addenda and the 2003 IBC is to refine and clarify existing standards. Any changes imposed by the addenda and IBC have, for the most part, already been incorporated in the practices of the elevator industry. Consequently, the Commission does not expect the addenda or the IBC to impose any fiscal burden on business.

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

LABOR COMMISSION
SAFETY
HEBER M WELLS BLDG
160 E 300 S

SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2004

AUTHORIZED BY: R Lee Ellertson, Commissioner

R616. Labor Commission, Safety.**R616-3. Elevator Rules.****R616-3-3. Safety Codes for Elevators.**

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 2000 ed., with 2002 Addenda issued May 4, 2002, with 2003 Addenda issued May 30, 2003, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. ~~[2000]2003 International Building Code [and the 2001 supplement section 1109.7, effective date January 1, 2003].~~

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-1999 Safety Standard For Platform Lifts And Stairway Chairlifts, issued July 26, 1999, with A18.1a 2001 addenda issued March 26, 2001.

KEY: elevators, certification, safety

~~[November 3, 2003]2004~~

Notice of Continuation January 10, 2002

34A-1-101 et seq.



FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Education, Administration **R277-102** Adjudicative Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26958
FILED: 02/26/2004, 09:33

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities, and Section 63-46b-5 provides directives to agencies choosing to enact rules regarding adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary for the State Board of Education to have clear standards and procedures to following regarding adjudicative proceedings. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/26/2004



Education, Administration **R277-413** Accreditation of Secondary Schools, Alternative or Special Purpose Schools

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26959
FILED: 02/26/2004, 09:34

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(1) directs the State Board of Education to establish rules and minimum standards for school accreditation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State law continues to require that the State Board of Education have rules and minimum procedures in place for school accreditation. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/26/2004

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/26/2004

Education, Administration
R277-425

Budgeting, Accounting, and Auditing for
Utah School Districts

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26960
FILED: 02/26/2004, 09:35

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(e) requires the State Board of Education to establish rules and minimum standards regarding financial, statistical, and student accounting requirements; Section 53A-1-404 allows the State Board of Education to approve auditing standards for school boards; and Section 53A-1-405 requires the State Board of Education to verify audits of financial and student accounting records of school districts for purposes of determining the allocation of Uniform School Fund moneys.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State law continues to require the State Board of Education to establish rules and minimum procedures and participate in the auditing process regarding financial, statistical and student accounting requirements. Therefore, this rule should be continued.

Education, Administration
R277-601

Standards for Utah School Buses and
Operations

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26961
FILED: 02/26/2004, 09:36

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(d) requires the State Board of Education to establish rules and minimum standards regarding state reimbursed bus routes, bus safety and operational requirements, and other transportation needs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State law continues to require that the State Board of Education have rules in place regarding state reimbursed bus routes, bus safety and operational requirements, and other transportation needs. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/26/2004

Education, Administration **R277-712**

Advanced Placement Programs

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26962
FILED: 02/26/2004, 09:37

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-17a-120 directs the State Board of Education to establish rules for districts to spend monies for accelerated learning programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State law continues to require the State Board of Education have rules in place regarding accelerated learning programs and school districts continue to provide advanced placement programs to students. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/26/2004

Education, Administration **R277-734**

Standards and Procedures for Adult Education Section 353 Funds

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26963
FILED: 02/26/2004, 09:37

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-15-401 places general control and supervision of adult education in the State Board of Education; and Subsection 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is being continued so it does not expire, however, Adult Education Section 353 funding has been discontinued so the rule will be repealed following continuation.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/26/2004

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**Environmental Quality, Solid and
Hazardous Waste
R315-320**

**Waste Tire Transporter and Recycler
Requirements**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26972
FILED: 03/01/2004, 10:07

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1, establishes the Utah Solid and Hazardous Waste Control Board and gives the Board the authority and responsibility to make and enforce rules to regulate the management of solid waste. For the protection of human health and the environment, the Board is required to make rules establishing minimum standards for the storage, collection, transport, treatment, and disposal of solid waste (Subsection 19-6-105(1)(a)). The Utah Waste Tire Recycling Act, Title 19, Chapter 6, Part 8, gives the Board the authority and responsibility to regulate the collection, transport, recycling, reimbursement for recycling, and disposal of waste tires to reduce the health and safety hazards posed by stockpiles of used tires and to promote the recycling of waste tires.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R315-320 has been changed several times since the last five-year review was filed on March 12, 1999. Two comments were received during the rulemaking processes to make the changes. A comment was received which suggested that it would be more practical, in the definition of the term "crumb rubber," to establish the size of particles as "equal to or less than 1/4 inch in diameter" rather than "particles that pass through an ASTM Standard 10 mesh." The suggestion was incorporated into the definition. The other comment suggested minor changes in the language of the definition of the term "demonstrated market" which were incorporated into the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No comments have been received that were in opposition to the rule. Rule R315-320 should be continued since it implements the requirements of

the Waste Tire Recycling Act to safely manage the collection, transportation, storage, recycling, and disposal of waste tires in a manner that is protective of human health and the environment.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carl Wadsworth at the above address, by phone at 801-538-6769, by FAX at 801-538-6715, or by Internet E-mail at cwadsworth@utah.gov

AUTHORIZED BY: Dennis Downs, Director

EFFECTIVE: 03/01/2004

▼ ————— ▼

**Health, Epidemiology and Laboratory
Services, Laboratory Services**

R438-13

**Rules for the Certification of Institutions
to Obtain Impounded Animals in the
State of Utah**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26968
FILED: 02/27/2004, 14:24

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-26-2 provides specific rulemaking authority to implement this program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes requirements for institutions seeking certification to obtain animals from establishments maintained for impounding animals seized by lawful authority. The rule makes available to institutions a source of animals that may be used in research, for the good of public health, at a reasonable cost. Therefore, this rule should be continued.

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

HEALTH
 EPIDEMIOLOGY AND LABORATORY SERVICES,
 LABORATORY SERVICES
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Mendenhall at the above address, by phone at 801-584-8470, by FAX at 801-584-8501, or by Internet E-mail at davidmendenhall@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 02/27/2004



Insurance, Administration
R590-170
Fiduciary and Trust Account Obligations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26976
 FILED: 03/01/2004, 16:51

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) gives the commissioner rulemaking authority to implement the provisions of Title 31A. Sections 31A-23a-406 and 409 do not have specific rulemaking authority. They both deal with the title business and how the funds received by a title agent should be maintained. This is covered in Section R590-170-5 of the rule which is entitled "Maintaining the Trust Account." Subsection 31A-23a-412(2)(b)(iii)(C) gives the commissioner the authority to require certain records be kept regarding an insurance licensee's business. Section R590-170-7 of the rule specifies accounting records that are to be maintained by the licensee. Subsection 31A-25-305(1) gives the commissioner the authority to adopt rules that will protect the integrity of a fiduciary account. The purpose of this rule is to set minimum standards that shall be followed for fiduciary and trust account obligations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets minimum

standards to be followed by licensees who hold insurers' or insureds' funds in a fiduciary capacity. It is very important to keep these minimum standards intact by continuing this rule in order to protect the payee's funds that are held in trust by the licensee. Trust violations continue to occur, therefore the department needs the standards set by this rule to regulate the marketplace, and so this rule should be continued.

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

INSURANCE
 ADMINISTRATION
 Room 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/01/2004



Public Safety, Administration
R698-4
Certification of the Law Enforcement Agency of a Private College or University

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26969
 FILED: 02/27/2004, 15:17

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-13-103(1)(b)(xi) provides that the members of a law enforcement agency of a private college or university may be law enforcement officers provided the law enforcement agency of the college or university has been certified by the Commissioner of Public Safety in accordance with rules of the Department of Public Safety. The purpose of this rule is to establish the criteria the law enforcement agency of a private college or university must meet in order to be certified.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: We need to continue this rule so private colleges or universities can have a law enforcement agency as long as their agency has been certified by the Commissioner of the Department of Public Safety in accordance with the provisions of this rule. This is important so colleges and universities can provide a safe environment for students, faculty, and visitors.

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

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Richard D. Wyss at the above address, by phone at 801-965-4794, by FAX at 801-366-0221, or by Internet E-mail at rwyss@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 02/27/2004



Tax Commission, Auditing **R865-7H** Environmental Assurance Fee

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26957
FILED: 02/25/2004, 10:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-6-410.5 imposes an environmental assurance fee on owners or operators of tanks that participate in the Environmental Assurance Program, and provides the commission rulemaking authority to establish the method of payment of the fee, the procedure for reimbursement or exemption of persons who do not participate in the program, and the procedure for confirming

with the Department of Environmental Quality those persons who qualify for reimbursement or exemption.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-7H-1 indicates when owners or operators of tanks that are not participants in the program qualify for an exemption from the environmental assurance fee, provides refund procedures for owners or operators of tanks that are not participants in the program but do not meet the requirements for exemption from the fee; requires the Department of Environmental Quality to provide the commission with a list of program participants on a monthly basis. Section R865-7H-2 provides an exemption from the fee for petroleum products brought into the state and packaged in barrels, drums, and cans; provides for a refund for persons who purchase petroleum products in bulk and repackage those petroleum products in barrels, drums, or cans, if prior to repackaging, the products were not stored in a tank covered by the program. Section R865-7H-3 provides that petroleum products exported from a refinery directly out of state are exempt from the fee; provides refund procedures for persons who store petroleum products in the state and export those products from the state if, prior to the export, the products were not stored in a tank covered by the program. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: Pam Hendrickson, Commissioner

EFFECTIVE: 02/25/2004



NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Administrative Services

Records Committee

No. 26973 (filed 03/01/2004 at 11:33 a.m.): R35-1. State Records Committee Appeal Hearing Procedures.
Enacted or Last Five-Year Review: 03/18/99 (No. 21751, NEW, filed 12/18/98 at 3:50 p.m., published 01/15/99)
Extended Due Date: 07/16/2004

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal and Reenact

REP = Repeal

Commerce

Occupational and Professional Licensing

No. 26754 (CPR): R156-17a-612. Operating Standards -
Pharmaceutical Wholesaler/Distributor and
Pharmaceutical Manufacturer located in Utah.

Published: January 15, 2004

Effective: February 19, 2004

Real Estate

No. 26835 (AMD): R162-7-3. Investigation and
Enforcement.

Published: January 1, 2004

Effective: February 18, 2004

Health

Center for Health Data, Health Care Statistics

No. 26800 (AMD): R428-10. Health Data Authority
Hospital Inpatient Reporting Rule.

Published: December 1, 2003

Effective: February 27, 2004

No. 26799 (AMD): R428-11. Health Data Authority
Ambulatory Surgical Data Reporting Rule.

Published: December 1, 2003

Effective: February 27, 2004

Natural Resources

Forestry, Fire and State Lands

No. 26865 (AMD): R652-40-1800. Abandonment.

Published: January 15, 2004

Effective: February 24, 2004

Wildlife Resources

No. 26867 (AMD): R657-33. Taking Bear.

Published: January 15, 2004

Effective: February 24, 2004

Transportation

Motor Carrier

No. 26823 (AMD): R909-1. Adoption of Federal
Regulations.

Published: December 15, 2003

Effective: March 1, 2004

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 1, 2004, including notices of effective date received through March 1, 2004, the effective dates of which are no later than March 15, 2004. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
<u>Fleet Operations, Surplus Property</u>					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
Agriculture and Food					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	Not Printed
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	02/02/2004	2004-4/75
R156-76-102	Definitions	26777	AMD	01/20/2004	2003-23/14
<u>Real Estate</u>					
R162-7-3	Investigation and Enforcement	26835	AMD	02/18/2004	2004-1/9
R162-105	Scope of Authority	26890	5YR	01/13/2004	2004-3/42
R162-202	Residential Mortgage Renewal Period	26837	AMD	02/03/2004	2004-1/10
R162-206	Licensing Examination	26840	NEW	02/03/2004	2004-1/12
R162-207	License Renewal	26839	NEW	02/03/2004	2004-1/13
R162-208	Continuing Education	26836	NEW	02/03/2004	2004-1/14
<u>Securities</u>					
R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	01/05/2004	2003-15/17
R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	01/05/2004	2003-23/83
Education					
<u>Administration</u>					
R277-102	Adjudicative Proceedings	26958	5YR	02/26/2004	2004-6/59
R277-413	Accreditation of Secondary Schools, Alternative or Special Purpose Schools	26959	5YR	02/26/2004	2004-6/59
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	26960	5YR	02/26/2004	2004-6/60
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired

NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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