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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, PO Box 141007, Salt Lake City, Utah 84114-1007, 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/

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SPECIAL NOTICES

COMMERCE
CONSUMER PROTECTION

PUBLIC HEARING ON A PROPOSED MODIFIED FEE SCHEDULE FOR SERVICES PROVIDED AND COSTS INCURRED BY THE DIVISION OF CONSUMER PROTECTION DURING FISCAL YEAR 2003

The Department of Commerce will hold a hearing on Monday, July 8, 2002, at 11:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 205, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on a proposed modified schedule for fees which could be assessed for services provided and costs which would be incurred by the Division in Fiscal Year 2003 as to proprietary schools. Pursuant to legislation enacted during the 2002 General Session of the Utah Legislature, administration of the Post-Secondary School Act was transferred from the State Board of Regents to the Division of Consumer Protection.

A May 17, 2002, hearing was conducted as to the fees initially proposed by the Division for proprietary schools. Based on that hearing and subsequent review, the Division has prepared a modified schedule to clarify the proposed fees. Copies of the proposed modified fee schedule will be distributed at the July 8, 2002, hearing. If adopted, the modified fee schedule would supplement the Division's fee schedule approved by the Legislature during its 2002 General Session. Subsection 63-39-3.2(5)(a) of the Budgetary Procedures Act provides an agency may establish and assess regulatory fees without legislative approval. That statue governs the process for the interim assessment of such fees prior to subsequent legislative approval.

For further information, please contact Joyce McStotts at (801) 530-6347.

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, LIBRARY

PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 02-12, dated June 7, 2002 (http://library.utah.gov/02-12.html); and List No. 02-13, dated June 21, 2002 (http://library.utah.gov/02-13.html). For copies of the complete lists, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view them on the World Wide Web at the addresses above.

GOVERNOR'S PROCLAMATION: CALLING THE FIFTY-FOURTH LEGISLATURE INTO A FIFTH SPECIAL SESSION

WHEREAS, since the adjournment of the 2002 General Session of the Fifty-Fourth Legislature of the State of Utah, matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

NOW, THEREFORE, I, MICHAEL O. LEAVITT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Fifty-Fourth Legislature of the State of Utah into a Fifth Special Session at the State Capitol at Salt Lake City, Utah, on the 26th day of June, 2002, at 8:30 a.m., for the following purposes:

1. To fund the Fiscal Year 2003 budget and consider amendments to the budget reserve account.
2. To reconsider H.B. 25, Adult Protective Services Amendments, passed in the 2002 general session for the purpose of making technical corrections.
3. To reconsider the timing of county canvassing, as amended by S.B. 36, Provisional Ballot, in the 2002 general session.
4. To consider amending the law on the collection, maintenance, and reporting of data by the courts with respect to driving under the influence cases.
5. To consider approving the proposed 2002 federal-Utah state trusts lands consolidation agreement.
6. To consider authorizing a local political subdivision to call a local special election for determining voter approval of a change in Utah's legal boundaries.
7. And, to consider such other measures as may be brought to the attention of the Legislature by supplemental communication from the Governor before or during the Special Session hereby called.

IN TESTIMONY WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 19th day of June, 2002.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

NATURAL RESOURCES
PARKS AND RECREATION

PUBLIC NOTICE OF 120-DAY (EMERGENCY) RULE FILINGS ON CHANGES IN BOATING SAFETY EQUIPMENT, REGULATIONS, PERMITS, AND ACCIDENT FINES

The Division of Parks and Recreation under the Department of Natural Resources has filed several 120-Day (Emergency) rules dealing with changes in boating safety equipment, regulations, permits, and accident fines. The rules are effective July 1, 2002, but will not be published until the July 15, 2002, issue of the *Utah State Bulletin*. Corresponding proposed amendments have also been filed to make these changes permanent. The amendments will also be published in the July 15, 2002, *Bulletin*.

The 120-Day rule filings are: R651-215 Personal Flotation Devices, DAR No. 23988; R261-206 Carrying Passengers for Hire, DAR No. 24989; R651-219 Additional Safety Equipment, DAR No. 24990; R651-223 Vessel Accident Reporting, DAR No. 24991; R651-225 Navigation and Steering Rules, DAR No. 24992; R651-216 Navigation Lights, DAR No. 24993; R651-224 Towed Devices, DAR No. 24994; and R651-221 Boat Livery Agreements, DAR No. 24995.

For copies of these filings you may contact the Division of Administrative Rules, PO Box 14007, Salt Lake City, UT 84114-1007; phone: 801-538-3218; FAX: 801-538-1773; or e-mail at: nllancaster@utah.gov.

Questions concerning these filings should be directed to: Dee Guess, Parks and Recreation, 1594 W North Temple, Room 116, Salt Lake City, UT 84116-3154; by phone: 801-538-7320, FAX: 801-538-7378, or e-mail at: deeguess@utah.gov.

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 June 1, 2002, 12:00 a.m., and June 14, 2002, 11:59 p.m. are included in this, the July 1, 2002, 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 July 31, 2002. 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 October 29, 2002, 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.

Administrative Services, Fleet Operations
R27-3-6
Application for Commute Use

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24930
FILED: 06/10/2002, 16:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change was added to the rule to insure that commute privileges are not abused and that there is no question of the necessity for commute privileges, when a request for commute is granted.

SUMMARY OF THE RULE OR CHANGE: There is now an additional step of approval for commute requests, when the request involves the person at each agency that approves the request.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(c)(viii)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no changes in the state budget associated with the changes to this rule. The changes deal only with requests for commute privileges.
❖ LOCAL GOVERNMENTS: There will be no changes to any local governments budgets associated with the changes to this rule. The changes deal only with requests for commute privileges for state employees.
❖ OTHER PERSONS: Employees with commute privileges are required by the federal government to pay taxes on the personal money saved by having commute privileges. This is an income tax charged to anyone with a commute vehicle, whether they are employed by the government or private industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Employees with commute privileges are required by the federal government to pay taxes on the personal money saved by having commute privileges. This is an income tax charged to anyone with a commute vehicle, whether they are employed by the government or private industry.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the change to this rule deals only with the steps required to optain commute privileges it will have no fiscal impact on any businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 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:
Alison Taylor at the above address, by phone at 801-538-3306, by FAX at 801-538-1773, or by Internet E-mail at alisontaylor@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-3. Vehicle Use Standards.
R27-3-6. Application for Commute Use.

(1) Each petitioning agency shall submit a completed and agency approved commute form (MP-2) to DFO.

(2) [~~Approval~~]Except in cases where the executive director of an agency requests commute use privileges, approval for commute privileges must be obtained from the executive director of the requesting agency before the commute form is submitted to DFO for tracking and reporting purposes.

(3) In the event that an executive director makes a request for commute use privileges, approval for commute privileges must be obtained from the appropriate official before the commute form is submitted to DFO for tracking and reporting purposes.

[~~(3)~~](4) Commute use is considered a taxable fringe benefit. All approved commute use drivers will be assessed the IRS daily rate while using a state vehicle for commute use.

[~~(4)~~](5) For each individual with commute use privileges, the employing agency shall, pursuant to Division of Finance Policy FIACCT 10-01.00, prepare an Employee Reimbursement/Earnings Request Form and enter the amount of the commute fringe benefit into the payroll system on a monthly basis.

KEY: state vehicle use
[~~January 23,~~] 2002
53-13-102
63A-9-401(1)(c)(viii)

Administrative Services, Fleet Operations
R27-4
Vehicle Replacement and Expansion of State Fleet

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24902
FILED: 06/03/2002, 14:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To set guidelines regarding the purchasing of any replacement

vehicle, the upgrading of vehicle type, or the purchasing of any additional vehicles to the state fleet.

SUMMARY OF THE RULE OR CHANGE: This rule covers the procedures that must be followed in order to upgrade or purchase an additional state vehicle through the Division of Fleet Operations as directed through legislation. Other guidelines are addressed for the purchase of replacement vehicles and executive vehicles.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-9-401(1)(a), 63A-9-401 (c)(v), 63A-9-401 (c)(ix), 63A-9-401(c)(xi), and 63A-9-401 (c) (xii)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Any additions to the state budget will be approved by the legislature prior to purchase or sale of vehicles. All monies will be provided through funding of other state agencies. Fleet Operations purchasing procedures will remain the same.
❖ LOCAL GOVERNMENTS: This rule will not affect any local governments, it covers only fleet expansion procedures for state agencies.
❖ OTHER PERSONS: This rule will not affect any other persons, it covers only fleet expansion procedures for state agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any additional costs will be in accordance with vehicles lease rates that are set by the Rates Committee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule is meant to establish guidelines for the expansions of the state fleet, it will have no fiscal impact on any businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 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:
Alison Taylor at the above address, by phone at 801-538-3306, by FAX at 801-538-1773, or by Internet E-mail at alisontaylor@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-4. Vehicle Replacement and Expansion of State Fleet.
R27-4-1. Authority.

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(c)(v), 63A-9-401(1)(c)(ix), 63A-9-401(1)(c)(x), 63A-9-401(1)(c)(xi) and 63A-9-401(1)(c) (xii), which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

(a) All agencies exempted from the DFO replacement program shall provide DFO with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) DFO shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) DFO shall assist agencies, including agencies exempted from the DFO replacement program, in their efforts to insure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63-38-3.5(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the Fleet Vehicle Advisory Committee (FVAC) shall, on the basis of input from user agencies, recommend to DFO a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the FVAC, determine and establish, for each fiscal year, the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-3. Agreements made pursuant to Section 63A-9-401(7).

(1) Agreements made pursuant to Section 63A-9-401(7) shall be permitted only in cases where the vehicles that are the subject matter of the agreements were, or are, funded from sources other than state appropriations.

(2) Agreements made pursuant to Section 63A-9-401(7) shall, at a minimum, contain:

(a) a precise definition of each duty or function that is being allowed to be performed; and

(b) a clear description of the standards to be met in performing each duty or function allowed; and

(c) a provision for periodic administrative audits by either the DFO or the Department of Administrative Services; and

(d) a representation that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with DFO, and that alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to insure state compliance with federal AFV mandates; and

(e) a representation that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; and

(f) a representation that all the information whose entry into DFO's fleet information system would be required if the vehicles that are the subject matter of the agreement were funded with state appropriations, shall be entered into DFO's fleet information system; and

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the standard replacement vehicle for the applicable class that has been established by DFO after reviewing the recommendations of the FVAC that will be purchased to take the place of each vehicle on the list.

(3) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(5) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(6) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion shall be required to provide proof of the requisite legislative approval for the procurement of an expansion vehicle and any additional features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(6) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(7) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the Fleet Vehicle Advisory Committee (FVAC), that results in an increase in vehicle cost shall be deemed a feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

(xii) date item sent to surplus; and

SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment an MIS fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the planned replacement vehicle established by DFO after reviewing the recommendations of the Fleet Vehicle Advisory Committee (FVAC), that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class. For example, an agency requests a Ford Focus instead of a Chevrolet Cavalier, the standard vehicle in the compact sedan class for FY 2001.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard ½ ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) shall pay to DFO, in full, prior to the purchase of the vehicle, a *vehicle class differential upgrade rate* designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

R27-4-9. Cost Recovery.

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs, and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by DFO according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to DFO approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

(iii) DFO shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) DFO shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the applicable replacement cycle mileage schedule, prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) DFO shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and DFO that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If DFO performs the installation, the billing process shall not begin until the agency has received the vehicle from DFO.

R27-4-10. Executive Vehicle Replacement.

(1) Executive Vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year DFO shall establish a standard executive vehicle type and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle.

(a) The alternative vehicle selection should not exceed the standard executive vehicle price parameter guidelines.

(b) In the event that the agency chooses an alternative vehicle that exceeds the standard vehicle guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle.

R27-4-11. Reservation of Vehicle Allocation for Surrendered Vehicles.

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) Except as provided in paragraph 3 of this section, DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open for the surrendering agency,

for a period not to exceed the remainder the fiscal year within which the surrender takes place.

(3) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the fiscal year within which the surrender took place, shall result in the removal of the surrendered vehicle or allotment from the state fleet and effect a reduction in state fleet size.

(4) DFO shall not hold vehicle allocations for an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(5) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the fiscal year within which the surrender took place, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

(1) DFO is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of DFO's duties is to insure that the state is able to obtain full utilization of, and the greatest residual value possible for state vehicles.

(2) DFO shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, DFO shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) driver and/or program each vehicle is assigned to;

(e) location of the vehicle;

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by DFO.

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle, and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, DFO may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement vehicles for vehicles that are chronically out of compliance with applicable replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully utilized.

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review of the reallocation or reassignment made by DFO. However, vehicles that are the subject matter of petitions for review shall remain with the agencies to which they have been reassigned or reallocated until such time as the Executive Director of the Department of Administrative Services or the executive director's designee renders a decision on the matter.

R27-4-13. Disposal of State Vehicles.

(1) State vehicles shall be disposed of in accordance with the requirements of Section 63A-9-801 and Rule R28-1.

KEY: fleet expansion vehicle replacement
2002
63A-9-401(1)(a)
63A-9-401(c)(v)
63A-9-401(c)(ix)
63A-9-401(c)(xi)
63A-9-401(c)(xii)

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

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 24931
FILED: 06/10/2002, 16:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To redefine the process that must be followed when a state vehicle is involved in a accident.

SUMMARY OF THE RULE OR CHANGE: The general substance of the rule has remained. However, the wording was made more specific in the areas of accident review. Information was added regarding the Accident Review Committee and the addition of Accident Review Committee, Accident Classifications, and a Driving Privilege Review Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(c)(viii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will be managed under current state budget constraints.

❖ LOCAL GOVERNMENTS: This rule will have no effect on local government monies.

❖ OTHER PERSONS: Cost compliance with the added requirements would be covered by other budgets already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Cost compliance with the added requirements would be covered by other budgets already in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule deals with the actions that may be taken by the state in the event a state employee has been involved in an auto accident while driving a state vehicle, there will be no fiscal impact on any businesses.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 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:
Alison Taylor at the above address, by phone at 801-538-3306, by FAX at 801-538-1773, or by Internet E-mail at alisontaylor@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-7. Safety and Loss Prevention of State Vehicles.
{**DAR Note:** Because of publication constraints, the repealed text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}

R27-7-1. Authority.

(1) This rule is established pursuant to Subsection 63A-9-401(1)(c)(iii) which requires the Division of Fleet Operations (DFO) to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Accident Reporting and Liability.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify, within 24 hours of the occurrence of the accident, DFO, Risk Management and the agency's management.

R27-7-3. Loss of Authority to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated.

(c) The employing agency or DFO may petition the Driving Privilege Review Board (DPRB) to extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked beyond the period for which the authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(d) The DPRB may extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked, beyond the period for which the driver's license is denied, cancelled, disqualified, suspended, if the evidence regarding the circumstances surrounding the denial, cancellation, disqualification, suspension or revocation of the authorized driver's license and driving history indicates that it is in the best interest of the state to extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked.

(3) The authority to operate a state vehicle shall be suspended or revoked for any of the following grounds:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a five (5) year period; or

(b) The authorized driver, while acting within the scope of employment, has received 5 or more citations for violating motor vehicle laws during a five (5) year period; or

(c) The unauthorized use, misuse, abuse or neglect of a state vehicle.

(4) DFO shall impose a period for which the authority to operate a state vehicle will be withdrawn, suspended or revoked under the circumstances described in R27-7-3(3)(a),(b) or (c), on the basis of an investigation of the circumstances surrounding each accident and the authorized driver's driving history.

(5) The withdrawal of authority to operate a state vehicle shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(6) The authorized driver or the employing agency may petition the DPRB to review the determination made by DFO.

(7) Any determination made by DFO with regard to the withdrawal, suspension or revocation of the authority to operate a state vehicle shall continue until such time as a review by the DPRB can be conducted, and a decision rendered.

R27-7-4. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall establish and maintain an Accident Review Committee (ARC). Each agency ARC shall conduct quarterly reviews of all accidents or complaints involving state vehicles under the possession or control of their respective agencies.

(2) The purpose of the ARC is to reduce the number of accidents and complaints involving drivers of vehicles being used in the course of conducting state business.

(3) The ARC shall determine, through a review process, whether an accident was either preventable or non-preventable, using standards established by the National Safety Council.

(4) The ARC shall determine the remedial action, if any, to be imposed in a particular accident case.

(5) Agency ARC determinations are subject to review by DFO. Each agency ARC shall, within five (5) business days of reviewing an accident, provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable.

(6) In the event that DFO does not concur with an agency ARC's conclusions regarding the accident, either the agency or DFO may request that the DPRB review the case.

(7) In the event that either the agency or DFO requests a review of the case, the DPRB's decision shall be binding.

(8) Upon the request of the DPRB, the ARC shall forward all applicable meeting minutes to the DPRB.

R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as at fault if any of the following factors are involved:

(a) Driving too fast for conditions;

(b) Failure to observe clearance;

(c) Failure to yield;

(d) Failure to properly lock the vehicle;

(e) Following too closely;

(f) Improper care of the vehicle;

(g) Improper backing;

(h) Improper parking;

(i) Improper turn or lane change;

(j) Reckless Driving as defined in Utah Code 41-6-45;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:

(a) The state vehicle is struck while the authorized driver is operating the vehicle in a safe manner;

(b) The state vehicle is struck while properly parked;

(c) The state vehicle is vandalized while parked at an authorized location.

(4) The ARC shall notify DFO of their findings, as to whether the accident in question was preventable or non-preventable, regarding each accident case reviewed.

R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the following:

(a) The authorized driver shall be required to attend a Risk Management-approved driver safety program after being involved in the first preventable accident;

(b) The driver shall be required to attend, at his or her expense, at least eight (8) hours of approved professional driver safety program after being involved in a second preventable accident;

(c) The driver may have his or her authority to operate a state vehicle suspended or revoked, pursuant to R27-7-3, if he or she is involved in a third preventable accident within five calendar years of being involved in the first preventable accident.

(3) The ARC shall refer any case involving the suspension of driving privileges to the DPRB for review. The suspension of state driving privileges shall continue until such time as a formal hearing before the DPRB can be held, and a decision rendered. The provisions of the DPRB's decision, including the revocation of the driver's authority to drive a vehicle in the conduct of state business, will govern from that time forward.

R27-7-7. Driving Privilege Review Board.

(1) The Driving Privilege Review Board (DPRB) shall have no more than 3 voting members. The Department of Administrative Services, the Division of Risk Management and the agency whose employee is the subject matter of the case pending before the DPRB shall each have a voting member.

(2) Agency actions that involve the withdrawal, suspension or revocation of the authority to operate a state vehicle are subject to review by the DPRB.

(3) The DPRB shall, upon receipt of the petition for review from the authorized driver, employing agency or the authorized driver pursuant to R27-5-3(2)(c) or R27-3-3(5), schedule a review and render a decision on whether to uphold the agency's decision regarding the withdrawal, suspension or revocation of the authority to operate a state vehicle, or decision rendered by the agency or impose a different penalty.

(4) DFO, the employing agency, and the authorized driver shall be notified of the hearing date, the reason for the hearing, the substance of the charges, as well as their respective right to respond to the petition, rebut the evidence presented and present evidence in their respective behalf at the hearing.

(5) The DPRB shall render a decision which will be forwarded to the agency for enforcement. In making its decision, the DPRB may consider factors, including but not limited to, the severity of injuries, the extent of damages, the authorized driver's culpability and willfulness.

(6) The DPRB may impose a range of penalties from no action to a withdrawal, suspension or revocation of the authority to operate a state vehicle for an indefinite period. In no case shall the withdrawal, suspension or revocation of the authority to operate a state vehicle be less than the period of withdrawal, suspension or revocation of the privilege to drive imposed by the courts.

(7) An employee whose authority to operate a state vehicle has been withdrawn, suspended or revoked may petition the DPRB for reinstatement of the authority on the basis of changed circumstances. The employee shall provide proof of the change in circumstances that would justify the reinstatement of authority.

KEY: accidents, incidents, tickets, ARC
2002
63A-9-401(1)(c)(viii)

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Commerce, Consumer Protection
R152-15
Business Opportunity Disclosure Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24898
FILED: 06/03/2002, 14:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to make the filing of promotional materials and the name and address of the registered agent of seller optional at the discretion of the division.

SUMMARY OF THE RULE OR CHANGE: The proposed change is intended to make the rule reflect the current practice of the division. Sellers of assisted marketing plans who are exempt from filing the information required by the Business Opportunity Disclosure Act (Title 13, Chapter 7) are currently required to file with the division any promotional materials. However, the division has not required that in practice.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state will save the costs associated with the handling and storing of files that are usually bulky and difficult to manage.
❖ LOCAL GOVERNMENTS: Because no local government is responsible for enforcement of the statute, there is no effect on local government.
❖ OTHER PERSONS: Although having the materials may be beneficial to some of the public, that benefit is marginal. The materials are required to be supplied to any potential purchaser ten days before any contract is signed or money exchanged.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those required to file the exemption notice will have some savings reflected mainly in postage and copy costs that are saved. However, since the division is not currently requiring the materials to be automatically filed with each filing, the savings are marginal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change should have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
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:
Kevin Olsen at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at kvolsen@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Francine Giani, Director

R152. Commerce, Consumer Protection.
R152-15. Business Opportunity Disclosure Act Rules.

. . . . . .

R152-15-2. Filing Requirements. Filing Fees.

(1) Information filed with the Division. In addition to the information required to be filed by Section 13-15-4 or 13-15-4.5 Utah Code Annotated (1953, as amended), sellers shall file with the Division, upon request, the following:

(a) the name and address of the registered agent of seller;

(b) any promotional materials used or to be used by either the seller or the purchaser, whether in writing or in any other form; and

(c) the appropriate filing fee as set in accordance with Section 63-38-3.2 Utah Code Annotated (1953, as amended), which presently is set as follows:

(i) Section 13-5-4 filing: $200.00 per year; and

(ii) Section 13-15-4.5 filing: $100.00 per year.

. . . . . .

KEY: franchises, marketing, consumer protection
[~~July 30, 2001~~]2002
Notice of Continuation November 25, 1997
13-15-3
13-2-5

Commerce, Consumer Protection
R152-34
Postsecondary Proprietary School Act Rules

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24896
FILED: 06/03/2002, 13:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2002 Legislature passed H.B. 111 which enacted Title 13, Chapter 34, of the Utah Code. This act transferred the administration of the Postsecondary Proprietary School Act from the Board of Regents to the Division of Consumer Protection. As a result it is necessary for the Division of Consumer Protection to enact rules similar to those enacted by the Board of Regents. (DAR Note: H.B. 111 is found at UT L 2002 Ch 222, and is effective as of July 1, 2002.)

SUMMARY OF THE RULE OR CHANGE: The new rule is similar in many respects to R171, the rule currently followed by the Board of Regents. The new rule is modified to reflect the administration by a new agency. (DAR NOTE: Though named in a similiar fashion as a title in the Utah Administrative

Code, R171 is a Board of Regents regulation and is not found within the administrative code; persons interested in reviewing the text of R171 may view it at this address on the web: http://www.utahsbr.edu/policy/r171.htm.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 13-2-5(1)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There should be no change in the costs to the state budget since the rule change is simply a transfer of authority from one agency to another.
❖ LOCAL GOVERNMENTS: The rule does not change anything in regards to local government and therefore there is no change anticipated in the costs to local government.
❖ OTHER PERSONS: The rule does not change anything in regards to other persons and therefore there is no change anticipated in the costs to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change that is anticipated to affect the compliance costs from what currently is being experienced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no change that is anticipated to affect the compliance costs from what currently is being experienced.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
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:
Kevin Olsen at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at kvolsen@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Francine Giani, Director

R152. Commerce, Consumer Protection.
R152-34. Postsecondary Proprietary School Act Rules.
R152-34-1. Purpose.

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study. A correspondence institution is expected to maintain a stability of faculty and other resources sufficient for the completion of the program(s) offered, in order that the credential awarded will be of the caliber accepted by recognized authorities in the field.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the division that specifies a stated period for an institution to correct stipulated deficiencies; but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

(9) "Suspension" means a negative action of the division that places stipulated limitations upon usage of a permit or certificate of registration for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences

shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonable require from time to time.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) An institution accredited by an accrediting organization recognized by the Commission on Recognition of Postsecondary Accreditation is exempt from registration for the purposes of the Act.

(4) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(5) To be exempt under Section 13-34-105(f), the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system.

(6) Flight schools approved under Part 141, Federal Aviation Regulations (FAR), 14 CFR Chapter 141, are exempt. Schools providing aviation training under Part 61, FAR, 14 CFR Chapter 61, are required to register.

(7) The division shall determine an institution's status in accordance with the categories contained in this section.

(8) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-106.

(9) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(10) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) Disclosure of whether the institution, or any owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(5) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period.

(2) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(3) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(4) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following: (1) issue a certificate of registration; (2) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-11(1); or (3) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(5) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(6) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet and an income statement for the most recent fiscal year with all applicable footnotes;

(b) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and/or

(c) A certified fiscal audit of its operations or such other documentation of financial status as may be required by the board.

(7) A satisfactory bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division. The obligation of the surety will be that the institution, its officers, agents, and employees will (1) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students, and (2) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules. The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah. The bond must be payable to the division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(8) The bond company may not be relieved of liability on the bond unless it gives the institution and the division ninety calendar days

notice by certified mail of the company's intent to cancel the bond. The cancellation or discontinuance of bond coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the bond was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the bond was in force. If at any time the company that issued the bond cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage unless a replacement bond is obtained and provided to the division.

(9) Before an original registration is issued, the institution shall secure and submit to the division a bond, certificate of deposit or letter of credit in an amount of seventy-five thousand dollars ($75,000) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, fifty thousand dollars ($50,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and twenty-five thousand dollars ($25,000) for institutions expecting to enroll less than 50 separate individual students during the first year. Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than ten thousand dollars ($10,000) may provide a bond of five thousand dollars ($5,000) for the first year of operation.

(10) The minimum amount of the required surety to be submitted annually after the first year of operation will be based on ten percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest $1,000.00), with a minimum bond amount of five thousand dollars ($5,000) and a maximum bond amount of seventy-five thousand dollars ($75,000). The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal. No additional programs may be offered without appropriate adjustment to the bond amount.

(11) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the bond meets the requirements of this rule. The division may require that such statement be verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the bond is questionable.

(12) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a bond.

(13) The division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(14) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled for non-traditional instruction may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or within a ten-day review period after receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than $200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) After the three-business-day cooling-off period or after a student enrolled for non-traditional instruction has submitted lesson materials or been in receipt of course materials for a period of ten days, the withdrawn or dismissed student shall be refunded, within thirty days of his/her discontinuing, a percentage of all tuition paid over and above a nonrefundable registration fee not to exceed $200 or an alternative amount that the institution can demonstrate to have been expended in undertaking that particular student's instruction. The balance due the student, over and above the nonrefundable registration fee will be calculated using the following schedule:

TABLE

Date of Withdrawal as a Percent of the Enrollment Period for Which the Student was Obligated	Portion of Tuition and Fees Obligated and Paid that are Eligible to be Retained by the Institution
Within 1st 10%	10%
Within 2nd 10%	25%
Within 3rd 10%	40%
Within 4th 10%	50%
Within 5th 10%	70%
Within 6th 10%	100%

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each, and

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits the collection of prepaid or unearned tuition and fees to six months of training, plus registration or start-up costs not to exceed $200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that it's organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof;

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions;

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The division may, in accordance with Title 63, Chapter 46b, Administrative Rules Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(g) noncompliance of the Postsecondary Proprietary Schools Act or these rules;

(h) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(i) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(j) failure to provide reasonable information to the division as requested from time to time.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary school, registration 2002
13-2-5(1)

▼ ▼

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24913
FILED: 06/04/2002, 08:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Professional Engineers and Professional Land Surveyors Licensing Board have determined that changes need to be made to the rules to: (1) eliminate the requirement that a person pass the National Council of Examiners for Engineering and Surveying (NCEES) Civil professional engineer (PE) examination to qualify for licensure as a structural engineer; (2) accept the NCEES Structural I examination as an equivalent to a NCEES PE examination for qualifications to be licensed as a professional engineer; (3) require persons seeking licensure as a professional land surveyor to document experience in both the field and office settings; (4) reflect current examination nomenclature; and (5) update the NCEES Code of Ethics.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, changes have been made to correctly identify the current examination abbreviations. In Subsection R156-22-102(5): deleted the requirement that a person take the NCEES Civil PE Examination in to be licensed as a professional structural engineer. In Section R156-22-204: added that the NCEES Structural I examination will be accepted as an equivalent exam to the NCEES PE examination for licensure as a professional engineer; and deleted reference to May 1, 2002, since that date has already passed in Subsection R156-22-204(2). In Section R156-22-205, similar amendments were made as in Subsection R156-22-102(5) and deleted reference to May 1, 2002, date. In Section R156-22-302: additions were made to clarify qualifying experience for licensure as a professional land surveyor; addition provides that an applicant for licensure as a professional land surveyor document two years of specific "hands on" experience in the field and two years of specific "office" experience. In Section R156-22-601, updated the NCEES Model Rules of Professional Conduct from the 1990 edition to the 1997 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-22-101, and Subsections 58-1-106(1) and 58-1-202(1)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the 1990 edition of the NCEES Model Rules of Professional Conduct and adds the 1997 edition of the same document

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Division will incur minimal costs, less than $100, to reprint the rule and applications for licensure once proposed amendments have been made effective. Any costs incurred will be absorbed in the Division's current budget.
❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments.
❖ OTHER PERSONS: The Division estimates that a professional engineer applicant could save approximately $150 in examination costs by not needing to take redundant examinations in order to meet the current examination requirements. The Division is unable to determine how many applicants will be affected due to the varying examination requirements in other states.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division estimates that a professional engineer applicant could save approximately $150 in examination costs by not needing to take redundant examinations in order to meet the current examination requirements. The Division is unable to determine how many applicants will be affected due to the varying examination requirements in other states.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change brings the Utah engineering licensing requirements in line with the national standard in accepting the passage of identified examinations for engineering licenses. A further substantive change clarifies the type of experience required for a professional land surveyor license. This rule change should have no negative fiscal impact on businesses, and might even reduce the cost of government services and the cost to regulated professionals. Ted Boyer, 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:
Lynn Bernhard at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at lbernhard@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 07/31/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/16/2002 at 9:00 AM, 160 East 300 South, Conference Room 428 (4th Floor), Salt Lake City, Utah.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-102. Definitions.

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

. . . . . .

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

(a) Professional Engineer.

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

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

(b) Professional Structural Engineer.

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

(ii) passing [~~the~~]a NCEES Principles and Practice of Engineering (PE) Examination[~~ - Civil or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination - Civil~~];

(iii) passing the NCEES Structural I and II Examination or passing a professional engineering examination that is substantially equivalent to the NCEES Structural I and II Examination; and

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

(c) Professional Land Surveyor.

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

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

. . . . . .

R156-22-204. Examination Requirements for Licensure as a Professional Engineer.

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

(a) the NCEES Fundamentals of Engineering ([~~"~~]FE[~~"~~]) Examination with a passing score as established by the NCEES;

(b) the NCEES Principles and Practice of Engineering ([~~"P~~]PE[~~"~~]) Examination with a passing score as established by the NCEES in one of the following disciplines:

(i) agriculture, chemical, civil, control systems, electrical, environmental, fire protection, industrial, manufacturing, mechanical, metallurgical, mining/mineral, nuclear, and petroleum; or

(ii) the NCEES Structural I examination; and

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

(2) [~~Beginning May 1, 2002, a~~]An applicant must have successfully completed the qualifying experience requirements set forth in Section R156-22-202, and have successfully completed the education requirements set forth in Section R156-22-201, and make application before being eligible to sit for the NCEES [~~P~~]PE examination.

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

R156-22-205. Examination Requirements for Licensure as a Professional Structural Engineer.

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

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

(b) [~~the~~]a NCEES Principles and Practice (PE) Examination [~~in the discipline of civil~~]with a passing score as established by the NCEES;

(c) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES or the 16 hour California Structural Examination with a passing score as established by the California engineering board; and

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

(2) [~~Beginning May 1, 2002, a~~]An applicant must have successfully completed the experience requirements set forth in Subsection R156-22-203(2) and make application before being eligible to sit for the NCEES Structural I and/or II examinations.

R156-22-302. Qualifying Experience for Licensure as a Professional Land Surveyor.

. . . . . .

(2) The four years of qualifying experience required in R156-22-302(1)(a)(i) and four of the eight years required in R156-22-302(1)(a)(ii) shall comply with the following:

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

(i) operation of various instrumentation;

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

(iii) public land survey systems;

(iv) calculations;

(v) traverse;

(vi) staking procedures;

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

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

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

(ii) reduction of notes and field survey data;

(iii) research of public records;

(iv) preparation and evaluation of legal descriptions; and

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

(3) The remaining four years or two years of qualifying experience required in R156-22-302(1)(a)(ii) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

([~~2~~]4) Full or part time employment for periods of time less than ten weeks in length will not be considered as qualifying experience.

R156-22-303. Examination Requirements for Licensure as a Professional Land Surveyor.

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

(a) the NCEES Fundamentals of Land Surveying ([~~"~~]FLS[~~"~~]) Examination with a passing score as established by the NCEES;

(b) the NCEES Principles and Practice of Land Surveying ([~~"P~~]PLS[~~"~~]) Examination with a passing score as established by the NCEES; and

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

(2) [~~Beginning May 1, 2002, a~~]An applicant must have successfully completed the qualifying experience requirements set forth in Subsections R156-22-301 an 302 and make application before being eligible to sit for the NCEES [~~P~~]PLS examination.

R156-22-401. Examination Requirements for Licensure by Endorsement.

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

(1) An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Section R156-22-204 except that the board may waive one or more of the following examinations under the following conditions:

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

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

(2) An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Section R156-22-205 except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(3) An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Section R156-22-303 except that the board may waive either the NCEES FLS Examination or the NCEES [~~P~~]PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the [~~P~~]PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-601. Unprofessional Conduct.

"Unprofessional conduct" includes:

. . . . . .

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), [~~1990~~]1997, which is hereby incorporated by reference.

KEY: engineers, surveyors, professional land surveyors, professional engineers
[~~December 4, 2001~~]2002
Notice of Continuation January 27, 1998
58-22-101
58-1-106(1)
58-1-202(1)

Commerce, Occupational and Professional Licensing

R156-59

Professional Employer Organization Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24897
FILED: 06/03/2002, 14:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to make several deletions in the rule resulting from changes made in the professional employer organization (PEO) statute (Title 58, Chapter 59) during the 2002 legislative session which relaxed the requirements for licensure (see H.B. 279). The Division also needs to update the statute citations as a result of the legislative changes. (DAR Note: H.B. 279 is found at UT L 2002 Ch 261, and was effective March 26, 2002.)

SUMMARY OF THE RULE OR CHANGE: The following sections were amended by deleting provisions that no longer have a basis in the statute governing professional employer organizations and by updating various statute citations throughout the rule: Sections R156-59-102, R156-59-302a, R156-59-302b, R156-59-306, and R156-59-502.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-59-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, less than $100, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments.

❖ OTHER PERSONS: The qualifications for licensure as a professional employer organization have been relaxed and accordingly there may be some savings to the PEO companies, but the Division is unable to determine any exact amount of savings to the licensed professional employer organizations as it could vary greatly between each company.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are associated with these proposed amendments for licensed professional employer organizations. The Division only anticipates savings to the PEO companies as identified above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is required to bring the rule into compliance with statutory changes made in the last legislative session. Although the statutory change relaxed the licensure requirements and may result in savings to professional employer organizations, this rule should not result in any further fiscal impact to businesses. Ted Boyer, 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:
Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@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 07/31/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/25/2002 at 9:00 AM, 160 East 300 South, Conference Room 4B (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-59. Professional Employer Organization Act Rules.
R156-59-102. [~~Definitions~~]Reserved.

[~~In addition to the definitions in Title 58, Chapters 1 and 59, as used in Title 58, Chapters 1 and 59 or these rules:~~

~~(1) "Certified audit", as used in Subsection 58-59-302(6), and "audited financial statement", as used in Subsection 58-59-306(2)(b)(i), means performing inquiry and analytical procedures which provide a basis for expressing assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with the generally accepted accounting principles; and the issuance of a report on the financial statements stating that an audit was performed in accordance with the standards established by the American Institute of Certified Public Accountants.~~

~~(2) "Self-funded or partially self-funded insurance plan" as used in Subsection 58-59-302(7) means any plan of insurance or provision of an employee health benefits program where risk of loss is borne by the professional employer organization.~~

~~(3) "Certified public accountant" as used in Section 58-59-306 means a Utah licensed certified public accountant unless exempted under Subsection 58-26a-305 of the Certified Public Accountant Licensing Act.~~]

R156-59-302a. Qualifications for Licensure.

(1) [~~In accordance with Subsection 58-59-302(5), the Division will permit an independent certified public accountant to certify in a form prescribed by the Division that the applicant has complied with the requirements set forth in Subsections 58-59-302(3) and (4).~~

~~(2)~~]In accordance with Subsection 58-59-302([~~5~~]4), the Division shall require [~~an independent certified public accountant to provide the following evidence of financial responsibility:~~

~~(a) a certification in a form prescribed by the Division that the PEO has paid all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums; and~~

~~(b)~~]the PEO's audited financial statement for the year immediately preceding the date of the license application.

[~~(3) In accordance with Subsection 58-59-302(7), the Division shall require:~~

~~(a) a licensed third party administrator to certify that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(b) and (d); and~~

~~(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries to submit a statement of actuarial opinion certifying that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).~~]

([4]2) In accordance with Subsection 58-59-302([~~9~~]6), responsible managers shall document the following education and experience requirements:

(a) an earned bachelors or post graduate degree in law, accounting, finance or business administration or other related educational program approved by the Division in consultation with the Board and has a minimum of two years of full time paid experience in law, accounting, finance, business administration, management, or other related education and experience approved by the Division in consultation with the Board; or

(b) graduation from high school or have a GED equivalent and have six years of full time paid experience in accounting, finance, business administration, management, or other related experience approved by the Division in consultation with the Board.

[~~(5) In accordance with Subsection 58-59-302(10), good moral character shall be established by evaluating the conduct of the officers, directors, responsible managers who have signatory authority over fiduciary funds or persons who have a controlling interest in the PEO.~~]

([~~6~~]3) In accordance with Subsections 58-59-501(5) and 58-59-502([~~3~~]1), each applicant for licensure as a PEO shall submit a form of the contract to be used between the PEO and the employee and submit a form of the contract to be used between the PEO and the client company to whom leased employees are provided.

. . . . . .

R156-59-302b. Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest[~~- Reestablishment of Qualifications for Licensure~~].

(1) In accordance with Subsections 58-59-302([~~8~~]5) and (6) and 58-59-502(2), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of a criminal background check satisfactory to the Division within 10 days after the change.

(2) In accordance with Subsection 58-59-302([~~9~~]5), responsible managers shall require submission of evidence in a form prescribed by the Division that the new responsible manager has the education and experience requirements set forth in Subsection R156-59-302a(4) within 10 days after the change.

[~~(3) In accordance with Subsection 58-59-302(10), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of evidence in a form prescribed by the Division that the new owner, officer, director, responsible manager or other persons having a controlling interest in the PEO is of good moral character as defined in Subsection R156-59-302a(5) within 10 days after the change.~~]

R156-59-306. Financial Filing Requirements[~~Responsibility~~].

[~~(1)~~]In accordance with Subsection 58-59-306[~~(2)(a)~~](1), the quarterly reports prepared by an independent CPA shall be submitted in accordance with the following schedule:

(a) March 31 for the quarter ending December 31;

(b) June 30 for the quarter ending March 31;

(c) September 30 for the quarter ending June 30; and

(d) December 31 for the quarter ending September 30.

[~~(2) Beginning September 30, 2001, in accordance with Subsection 58-59-306(2)(b)(ii), if the PEO is self-funded or partially self-funded:~~

~~(a) a third party administrator shall certify annually that the PEO is in compliance with Subsection 58-59-302(7)(b) and (d); and~~

~~(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries shall submit annually a statement of actuarial opinion certifying that the PEO is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).~~]

R156-59-502. Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.

In accordance with Subsection 58-59-502([~~8~~]4), in order to obtain prior written approval from the Division for sales, transfers or entering into contracts which commits the licensee to make future payments, the PEO shall submit:

(1) an application for licensure, if the event or events listed in Subsection 58-59-502([~~8~~]4) results in or would require the creation of a new business entity; or

(2) [~~an audited financial statement~~]a verification prepared by an independent certified public accountant stating that upon completion of the event or events listed in Subsection 58-59-502([~~8~~]4)[~~:~~

~~(a) the PEO will remain financially responsible as set forth in Subsection 58-59-306(2)(b)(i); and~~

~~(b)~~]the PEO will have a minimum adjusted net worth of $50,000 or 5% of the total adjusted liabilities, whichever is greater.

KEY: licensing, professional employer organization[~~*~~]
[~~September 18, 2000~~]2002
Notice of Continuation January 27, 1998
58-1-106(1)
58-1-202(1)
58-59-101

▼ ▼

Commerce, Real Estate
R162-4
Office Procedures - Real Estate Principal Brokerage

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24927
FILED: 06/07/2002, 16:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed change does three things: 1) increases the broker deposit (the amount of his own money a broker may keep in the trust account); 2) clarifies the ambiguity in the interest-bearing trust account provision; and 3) clarifies the earnest money dispute/mediation/interpleader/disbursement process.

SUMMARY OF THE RULE OR CHANGE: This change increases the broker deposit from $100 to $500. It makes it clear that "other trust funds," not just earnest money deposits, may be deposited into interest-bearing accounts under certain conditions. It also defines the conditions under which a broker may disburse earnest money and restores a previously deleted provision which allows a broker to opt to interplead disputed funds.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(iii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The changes do not result in any increased or decreased revenue or increased or decreased expenses to the State. The agency made the determination that there would be no increased or decreased expenses to the State because State government is not affected by the real estate licensee rules. This rule affects only real estate brokers and their handling of client funds entrusted to them. The Division does not anticipate that its investigation and enforcement costs would be affected in any way by the revisions to this rule.

❖ LOCAL GOVERNMENTS: Local government is not affected by the real estate licensee rules. See the explanation above regarding the cost impact to state government, which outlines the applicability of the rule to real estate brokers and no one else.

❖ OTHER PERSONS: Since the amount of broker deposit is optional, the change in the maximum allowable amount of broker deposit will neither cost nor save brokers money. Currently, brokers are often caught up in time-consuming and expensive disputes over who should receive the earnest money deposit upon the failure of a transaction. It is believed that these rules changes, by providing clear standards for when to disburse and when not to disburse, will result in a savings to brokers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A broker who opts to interplead disputed funds would be required to advance his own funds for the cost of the interpleader. However, the broker should be reimbursed those costs at the conclusion of the interpleader action. Also, it should be noted that the interpleader process would be an option for a broker, not a requirement. Any broker who did not want to advance his own funds pending reimbursement by the court would not have to use the interpleader process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact--Technical amendments only.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R162. Commerce, Real Estate.
R162-4. Office Procedures - Real Estate Principal Brokerage.

. . . . . .

R162-4-2. Trust Accounts.

4.2 All monies received in a real estate transaction regulated under Section 61-2-1, et seq., must be deposited in a separate non-interest bearing "Real Estate Trust Account," or, if the broker and the parties to the transaction agree in writing, into an "Interest Bearing Real Estate Trust Account," in a Utah bank, credit union, or other approved escrow depository in this state. The principal broker will be held personally responsible for deposits at all times. The principal broker must notify the Division in writing of the location and account numbers of all real estate trust accounts which he maintains. The "Real Estate Trust Account" and the "Interest Bearing Real Estate Trust Account" shall be used exclusively for real estate transactions regulated under Section 61-2-1, et seq. Funds received in connection with rental of tourist accommodations for any period of less than 30 consecutive days shall not be deposited in the "Real Estate Trust Account" or the "Interest Bearing Real Estate Trust Account."

. . . . . .

4.2.2. Commingling. Not more than [~~$100~~]$500 of the principal broker's own funds can remain in the "Real Estate Trust Account" or the "Property Management Trust Account," or the Division will consider the account to be commingled.

. . . . . .

4.2.4. Interest Bearing Account. If an earnest money deposit or other trust funds are[~~is~~] received and the parties believe that it would be uneconomical to place the money on demand in the "Real Estate Trust Account," or the parties want interest earned on the funds[~~deposit~~] to be used for an affordable housing program , such as the Utah Association of REALTORS Housing Opportunity Fund (UARHOF), the principal

broker may, upon the written request of the parties, place the money in a separate "Interest Bearing Real Estate Trust Account." The written request must designate to whom the interest will be paid upon completion or failure of the sale.

. . . . . .

4.2.7. Disbursements. All cash and like payments in lieu of cash received by a principal broker in a real estate transaction are to be disbursed only in accordance with [~~the terms of~~]specific language in the Real Estate Purchase Contract [~~which authorizes~~]authorizing such disbursement, other proper written authorization of the parties having an interest in the payments, or by court order.

. . . . . .

4.2.7.3. When it becomes apparent to the principal broker that a transaction has failed, or if a party to the failed transaction requests disbursement of the earnest money or other trust funds, the principal broker is required to determine whether any of the conditions in the Real Estate Purchase Contract authorizing disbursement have occurred or whether there is other written authorization of the parties to disburse the trust funds[~~those funds may only be disbursed by the principal broker as provided in R162-4.2.7 above~~].

4.2.7.4. Disputes over funds. For the purposes of this section and section 4.2.7.5, a "dispute over funds" is defined as any situation in which both parties to a contract have submitted a written claim of entitlement to earnest money or other trust funds to the broker holding the funds.

4.2.7.4.1 If there is written authorization to disburse in the Real Estate Purchase Contract signed by both parties or in another writing signed by the party who will not be receiving the funds, the principal broker may disburse the funds without further delay, whether or not there is a dispute between the parties over the funds.

4.2.7.4.2 The principal broker may, at the broker's option, interplead the funds into court in any transaction where the broker is unable to determine whether there is written authorization to disburse under the circumstances of the transaction. If the principal broker interpleads the funds, the funds shall only be disbursed by the principal broker: a) upon written authorization of the parties who will not receive the funds; b) pursuant to the order of a court of competent jurisdiction; or c) as provided in Section 4.2.7.6.

4.2.7.5 Mediation. In the event a dispute arises over the return or forfeiture of the earnest money or other trust funds and the principal broker has not already disbursed the funds in accordance with section 4.2.7.4.1, or interpleaded the funds in accordance with section 4.2.7.4.2, and if no party has filed a civil suit arising out of the transaction, the principal broker shall, within 15 days of receiving written notice of the fact that both parties claim the disputed funds[~~dispute~~], provide the parties written notice of the dispute and request them to meet to mediate the matter. If the parties have contractually agreed to submit disputes arising out of their contract to mediation, the principal broker shall notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. If the parties have not contractually agreed to independent mediation, the principal broker holding the earnest money or trust funds shall use good faith best efforts to mediate.

4.2.7.[~~4~~]5.1. Unsuccessful mediation. In the event the dispute over funds is not resolved in either a broker or independent mediation attempt, the principal broker shall maintain the disputed funds in a non-interest bearing real estate trust account. If the parties authorize, or if they previously authorized, deposit into a separate interest bearing trust account as provided in R162-4.2.4, the disputed funds may be maintained in a separate interest bearing trust account for disputed funds. The funds shall only be disbursed by the principal broker: (1) upon written authorization of the parties who will not receive the funds; (2) pursuant to the order of a court of competent jurisdiction; or (3) as provided in Section 4.2.7.4.2.

4.2.7.[~~4.2~~]6. If the principal broker has not received written notice of a claim to the funds, including interest if any, within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq.

. . . . . .

KEY: real estate business
[~~April 23, 1998~~]2002
Notice of Continuation July 1, 1997
61-2-5.5

Environmental Quality, Drinking Water
R309-101
(Changed to R309-100)
General Administration of Drinking Water Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24979
FILED: 06/14/2002, 15:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is to update and correct rule references to adhere to a reorganization of the Division's rules (R309) to maintain a more consistent referencing standard.

SUMMARY OF THE RULE OR CHANGE: The rule number is being changed from R309-101 to R309-100 and redundant appeal language is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ LOCAL GOVERNMENTS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ OTHER PERSONS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change does not add any additional requirements. There should be no additional compliance costs due to this rule change because it is just reorganizing and clarifying.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Ken Bousfield or Patti Fauver at the above address, by phone at 801-536-4207 or 801-536-4196, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at kbousfie@deq.state.ut.us or pfauver@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-100. Administration: Drinking Water Program.[~~R309-101. General Administration of Drinking Water Program.~~]
R309-100-1. Purpose.

The purpose of this rule is to set forth the water quality and drinking water standards for public water systems.

R309-100-2 Authority.
R309-100-3 Definitions.
R309-100-4 General.
R309-100-5 Approval of Plans and Specifications for Public Water System Projects.
R309-100-6 Feasibility Studies.
R309-100-7 Sanitary Survey and Evaluation of Existing Facilities.
R309-100-8 Rating System.
R309-100-9 Orders and Emergency Actions.
R309-100-10 Variances.
R309-100-11 Exemptions.

R309-100-2. 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 of the Utah Code and in accordance with 63-46a fo the same, known as the Administrative Rulemaking Act.

R309-100-3. Definitions.

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

R309-100-4. General.[~~R309-101-1. Coverage.~~]

These rules shall apply to all public drinking water systems within the State of Utah.

(1) A public drinking water system is a system, either publicly or privately owned, providing water for human consumption and other domestic uses, which:

(a)[~~a.~~] Has at least 15 service connections, or

(b)[~~b.~~] Serves an average of at least 25 individuals daily at least 60 days out of the year.

(c) Such term includes collection, treatment, storage or[~~and~~] distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with the system but not under such control (see 19-4-102 of the Utah Code Annotated). All public water systems are further categorized into three different types, community water (CWS), non-transient non-community water (NTNCWS), and transient non-community water (TNCWS).

(2)[~~1.1~~] Categories of Public Drinking Water Systems

Public drinking water systems are divided into three categories, as follows:

(a)[~~a.~~] "Community water system" means a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(b)[~~b.~~] "Non-transient, non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same nonresident persons over 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.

(c)[~~c.~~] "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.[~~"Non-community water system" means a public drinking water system that is not a community water system or a non-transient, non-community water system.~~]

(d) The distinctions between "Community", "Non-transient, non-community", and Transient Non-community water systems are important with respect to monitoring and water quality requirements.

(2)[~~1.2~~] Responsibility

(a) All public drinking water systems must have a person or organization designated as the owner of the system. The name, address and phone number of this person or organization shall be supplied, in writing, to the Board.

(b) The name of the person to be contacted on issues concerning the operation and maintenance of the system shall also be provided, in writing, to the Board.

R309-100-5.[~~R309-101-2.~~] Approval of Plans and Specifications for Public Water Supply Projects.

(1) The Executive Secretary must approve, in writing, all engineering plans and specifications for public drinking water projects prior to construction.

(2) Refer to R309-105-6 and/or R309-500-6[~~R309-102-2~~] for further requirements.

(3) Operating Permits shall be obtained by the public water system prior to placing any public drinking water facility into operation as required in R309-500-9.

R309-100-6.[~~R309-101-3.~~] Feasibility Reviews.

(1) Upon the request of the local health department, the Department of Environmental Quality will conduct a review to determine the "feasibility" of adequate water supply for any proposed public water system (e.g. subdivisions, industrial plants or commercial facilities). Information submitted to the Department for consideration must be simultaneously submitted to the local health department. This feasibility review is a preliminary investigation of the proposed method of water supply and is done in conjunction with a review of proposed methods of wastewater disposal.

(2) Refer to the Department of Environmental Quality publication "Review Criteria for Establishing the Feasibility of Proposed Housing Subdivisions" available at the Division of Drinking Water.

R309-100-7.[~~R309-101-4.~~] Sanitary Survey and Evaluation of Existing Facilities.

(1) The Executive Secretary, after considering information gathered during sanitary surveys and facility evaluations, may make determinations of regulatory significance including: monitoring reductions or increases, treatment, variances and exemptions.

(2)[~~4.1~~] CONDUCTING SANITARY SURVEYS

(a) The Executive Secretary shall ensure a sanitary survey is conducted at least every five years on all public water systems except non-community water systems that use only protected and disinfected ground water. The Executive Secretary shall ensure a sanitary survey is conducted at least every ten years on all non-community water systems that use only disinfected ground water from protected ground water zones as designated under R309-600[~~R309-106~~]. The Executive Secretary shall conduct an initial sanitary survey by June 29, 1994, on community water systems that do not collect five or more routine bacteriologic samples per month and by June 29, 1999, on non-transient non-community and non-community water systems.

(b) Sanitary surveys conducted by the following individuals under the circumstances as listed, may be used by the Executive Secretary for the above determinations:

(i)[~~a.~~] Division of Drinking Water personnel;

(ii)[~~b.~~] Utah Department of Environmental Quality District Engineers;

(iii)[~~c.~~] local health officials;

(iv)[~~d.~~] Forest Service engineers;

(v)[~~e.~~] Utah Rural Water Association staff;

(vi)[~~f.~~] consulting engineers; and

(vii)[~~g.~~] other qualified individuals authorized in writing by the Executive Secretary.

(3)[~~4.2~~] CONDITIONS ON CONDUCT OF SANITARY SURVEYS

In order for the groups of individuals listed in R309-100-7(2)(b)[~~R309-101-4.1~~] to conduct sanitary surveys acceptable for consideration by the Executive Secretary, the following criteria must be met:

(a) Surveys of all systems involving complete treatment plants must be performed by Division of Drinking Water staff or others authorized in writing by the Executive Secretary;

(b) Local Health officials may conduct surveys of systems within their respective jurisdictions;

(c) U.S. Forest Service (USFS) engineers may conduct surveys of water systems if the system is owned and operated by the USFS or USFS concessionaires;

(d) Utah Rural Water Association staff may conduct surveys of water systems if the system's population is less than 10,000;

(e) Consulting Engineers under the direction of a Registered Professional Engineer;

(f) Other qualified individuals who are authorized in writing by the Executive Secretary may conduct surveys.

(4)[~~4.3~~] SANITARY SURVEY REPORT CONTENT

The Executive Secretary will prescribe the form and content of sanitary survey reports and be empowered to reject all or part of unacceptable reports.

(5)[~~4.4~~] ACCESS TO WATER FACILITIES

Department of Environmental Quality employees after reasonable notice and presentation of credentials, may enter any part of a public water system at reasonable times to inspect the facilities and water quality records, conduct sanitary surveys, take samples and otherwise evaluate compliance with Utah's drinking water rules. All others who have been authorized by the Executive Secretary to conduct sanitary surveys must have the permission of the water system owner or designated representative before a sanitary survey may be conducted.

(6) Refer to R309-100-8[~~R309-101-5~~] and R309-105-6[~~R309-102-3~~] for further requirements.

R309-100-8.[~~R309-101-5.~~] Rating System.

The Executive Secretary shall assign a rating to each public water supply in order to provide a concise indication of its condition and performance. The criteria to be used for determining a water system's rating shall be as set forth in R309-150.

R309-100-9.[~~R309-101-6.~~] Orders and Emergency Actions.

(1) In situations in which a public water system fails to meet the requirements of these rules[~~regulations~~], the Board or the Executive Secretary may[~~shall~~] issue an order[~~"Order"~~] to a water supplier to take appropriate protective or corrective measures.

(2) Failure to comply with these rules or with an order issued by the Executive Secretary or the Board[~~take the required measures~~] may result in the imposition of penalties as provided in the Utah Safe Drinking Water Act.[~~Appeal procedures from administrative orders are outlined in the Utah Safe Drinking Water Act.~~]

(3) The Executive Secretary may [~~also~~]respond to emergency situations involving public drinking water, including emergency situations as described in R309-105-18, in a manner [~~deemed~~]appropriate to protect the public health.[~~Such emergency situations shall include those described in R309-102-10.~~] The Executive Secretary's response may include the following:

(a)[~~1.~~] Issuing press releases to inform the public of any confirmed or possible hazards in their drinking water.

(b)[~~2.~~] Ordering water suppliers to take appropriate measures to protect public health, including issuance of orders pursuant to 63-46b-20, if warranted.

R309-100-10.[~~R309-101-7.~~] Variances.

(1) Variances to the requirements of R309-200[~~R309-103~~] of these rules may be granted by the Board to water systems which, because of characteristics of their raw water sources, cannot meet the required maximum contaminant levels despite the application of

best technology and treatment techniques available (taking costs into consideration).

(2) The variance will be granted only if doing so will not result in an unreasonable risk to health.

(3) No variance from the maximum contaminant level for total coliforms are permitted.

(4) No variance from the minimum filtration and disinfection requirements of R309-525 and R309-530[~~R309-107 and R309-108~~] will be permitted for sources classified by the Executive Secretary as directly influenced by surface water.

(6) Within one year of the date any variance is granted, the Board shall prescribe a schedule by which the water system will come into compliance with the maximum contaminant level in question. The requirements of Section 1415 of the Federal Safe Drinking Water Act, PL 99-339, are hereby incorporated by reference. The Board shall provide notice and opportunity for public hearing prior to granting any variance or determining the compliance schedule. Procedures for giving notice and opportunity for hearing will be as outlined in 40 CFR Section 142.44.

R309-100-11.[~~R309-101-8.~~] Exemptions.

(1) The Board may grant an exemption from the requirements of R309-200[~~R309-103~~] or from any required treatment technique if:

(a)[~~1.~~] Due to compelling factors (which may include economic factors), the public water system is unable to comply with contaminant level or treatment technique requirements, and

(b)[~~2.~~] The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

(c)[~~3.~~] The granting of the exemption will not result in an unreasonable risk to health.

(2)[~~4.~~] No exemptions from the maximum contaminant level for total coliforms are permitted.

(3)[~~5.~~] No exemptions from the minimum disinfection requirements of R309-200-5(7)[~~R309-103-2.6~~] will be permitted for sources classified by the Executive Secretary as directly influenced by surface water.

(4) Within one year of the granting of an exemption, the Board shall prescribe a schedule by which the water system will come into compliance with contaminant level or treatment technique requirement. The requirements of Section 1416 of the Federal Safe Drinking Water Act, PL 99-339, are hereby incorporated by reference.

(5) The Board shall provide notice and opportunity for an exemption hearing as provided in 40 CFR Section 142.54.

{**DAR Note:** Because of publication constraints, the repealed text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}

KEY: drinking water, environmental protection, administrative procedures
[~~September 13, 1995~~]August 12, 2002
Notice of Continuation April 16, 2001
19-4-104
63-46b-4

▼ ▼

Environmental Quality, Drinking Water
R309-102
(Changed to R309-105)
Responsibilities of Public Water System Owners and Operators

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24985
FILED: 06/14/2002, 15:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is to update and correct rule references to adhere to a reorganization of the Division's rules (R309) to maintain a more consistent referencing standard.

SUMMARY OF THE RULE OR CHANGE: The rule number is being changed from R309-102 to R309-105, some sections are reorganized, some requirements clarified, and some sections have been relocated in this rule from other existing R309 rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ LOCAL GOVERNMENTS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ OTHER PERSONS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change does not add any additional requirements. There should be no additional compliance costs due to this rule change because it is just reorganizing and clarifying.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Ken Bousfield or Patti Fauver at the above address, by phone at 801-536-4207 or 801-536-4196, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at kbousfie@deq.state.ut.us or pfauver@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
[~~R309-102. Responsibilities of Public Water System Owners and Operators.~~]R309-105. Administration: General Responsibilities of Public Water Systems.
R309-105-1. Purpose.

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.
R309-105-3 Definitions.
R309-105-4 General.
R309-105-5 Exemptions from Monitoring Requirements.
R309-105-6 Construction of Public Drinking Water Facilities.
R309-105-7 Source Protection Plans.
R309-105-8 Existing Water System Facilities.
R309-105-9 Minimum Pressure.
R309-105-10 Operation and Maintenance Procedures.
R309-105-11 Operator Certification.
R309-105-12 Cross Connection Control.
R309-105-13 Finished Water Quality.
R309-105-14 Operational Reports.
R309-105-15 Annual Reports.
R309-105-16 Reporting Test Results.
R309-105-17 Record Maintenance.
R309-105-18 Emergencies.

R309-105-2. 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 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-105-3. Definitions.

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

[~~R309-102-1.~~]R309-105-4. General.

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

R309-105-5. Exemptions from Monitoring Requirements.

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Executive Secretary may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Executive Secretary authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

[~~R309-102-2.~~]R309-105-6. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

(1)[~~2.1~~] Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5[~~R309-102-2.3~~], must be approved in writing by the Executive Secretary prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Executive Secretary as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, must be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-105-6(3)(a)[~~R309-102-2.3.a~~].

(2)[~~2.2~~] Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities must conform to the applicable standards contained in R309-204 and R309-500 through R309-550[~~R309-105 through R309-112~~] of these rules. The Executive Secretary may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-204 and R309-500 through R309-550[~~Design and Construction Standards~~] are not appropriate. Thus, the Executive Secretary may grant an "exception" to portions of these standards [~~the Design and Construction Standards (R309-105 through R309-112)~~] if it can be shown that the granting of such an exception will not jeopardize the public health.

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-204 and R309-500 through R309-550. [~~Design and Construction Standards.~~] These treatment techniques may be accepted by the Executive Secretary if it can be shown that:

(i)[~~1.~~] They will result in a finished water meeting the requirements of R309-200[~~R309-103~~] of these regulations.

(ii)[~~2.~~] The technique will produce finished water which will protect public health to the same extent provided by comparable

treatment processes outlined in the applicable standards contained in R309-204 and R309-500 through R309-550. [~~Design and Construction Standards.~~]

(iii)[~~3.~~] The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-204 and R309-500 through R309-550. [~~Design and Construction Standards.~~]

(3)[~~2.3~~] Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval. [~~The following describes what projects must be submitted for review and defines the term "Public Drinking Water Project":~~

~~a. All facilities of any new public drinking water supply.~~

~~b. Any addition to or modification of an existing public water supply which will or may affect the quality and/or quantity of the supply. Thus, additions to or modifications of the following facility or facilities must be submitted for review:~~

~~1. Sources~~

~~2. Transmission lines~~

~~3. Treatment~~

~~4. Storage~~

~~5. Pumping~~

~~6. Pressure modification~~

~~7. Distribution system modifications or extensions of more than 500 feet; or affecting or potentially adding more than 10% of the number of connections in the system. These modifications and extensions are not considered routine. However, suppliers with full-time water department staff, which includes a registered professional engineer, need only submit plans for distribution system extensions or modifications exceeding the 10% limitations given above (i.e. length limitation would not apply in this case).~~

~~Routine maintenance or repairs of existing public water systems, carried out in conformance with all applicable regulations (see R309-102-4.2) and not altering the system's ability to provide an adequate supply of water, need not be submitted for review.~~

~~2.4 Preparation of Plans and Specifications~~

~~2.4.1 Professional Registration~~

~~Plans and specifications for all public drinking water projects must be stamped and signed by a licensed professional engineer in accordance with Utah Code Annotated Sections 58-22-602(2) et seq. Any document not so stamped will be returned without review.~~]

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Executive Secretary.

(5)[~~2.4.2~~] Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6)[~~2.5~~] Requirements After Approval of Plans for Construction

After the approval of plans for construction, [~~the following are required:~~] and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

[~~a. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the approval must be obtained prior to proceeding with construction.~~

~~b. As a project proceeds, copies of all "change orders" affecting facilities as described in R309-102-2.3 must be forwarded to the Division of Drinking Water.~~

~~c. Changes to the project which will or may have an impact on the quantity or quality of the delivered water shall be reviewed and approved by the Executive Secretary. Where such changes involve revisions to previously submitted plans or specifications, such changes shall be clearly noted on the appropriate sheet or page.~~

~~d. The Division of Drinking Water shall be informed of the progress of a project (as specified in the plan approval letter) and may conduct a final inspection prior to commencement of the regular use of the facility. Interim inspections may also be conducted.~~

~~e. The Executive Secretary may require that "as built" drawings be submitted by the water supplier to the Division of Drinking Water. The as-built drawings must confirm that the project has been constructed in accordance with the approved plans.~~]

R309-105-7. Source Protection.

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

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

[~~R309-102-3.~~]R309-105-8. Existing Water System Facilities.

(1) All public water systems shall[~~must~~] deliver water meeting the applicable requirements of R309-200[~~R309-103~~] of these rules [~~regulations~~].

(2) Existing facilities shall[~~must~~] be brought into compliance with R309-204 and R309-500 through R309-550[~~R309-105 through R309-112~~] or must be reliably capable of delivering water meeting the requirements of R309-200[~~R309-103~~].

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall[~~must~~] solve the problem(s).

R309-105-9. Minimum Water Pressure.

(1) Unless otherwise specifically approved by the Executive Secretary, no water supplier shall allow any connection to the water system where water pressure at the point of connection will fall below 20 psi during the normal operation of the water system.

(2) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

[~~R309-102-4.~~]R309-105-10. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies must be carried out with due regard for public health and safety. The following sections describe procedures which shall[~~must~~] be used in carrying out some common operation and maintenance procedures.

(1)[~~4.1~~] Chemical Addition

(a) Water system operators shall[~~must~~] determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF[~~National Sanitation Foundation (NSF)~~] Standard 60.

(b) No chemicals or other substances shall[~~may~~] be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Division of Drinking Water.

(c) Chlorine, when used in the distribution system, shall[~~must~~] be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks shall[~~must~~] be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall[~~must~~] use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2)[~~4.2~~] New and Repaired Mains

(a) All new water mains shall[~~must~~] meet the requirements of R309-550-6[~~R309-112-1.1~~] with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF [~~National Sanitation Foundation (NSF)~~] Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92[~~C651~~]. The chlorine solution shall[~~must~~] be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF [~~National Sanitation Foundation (NSF)~~] Standard 61.

(3)[~~4.3~~] Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall[~~must~~] be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92[~~C652~~] shall[~~must~~] be followed in this regard.

(4)[~~4.4~~] Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas 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 meets the requirements of these rules [~~regulations~~] (see R309-204-7[~~R309-106-3.5~~]).

(5)[~~4.5~~] Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall[~~must~~] be secure.

(6)[~~4.6~~] Seasonal Operation

Water systems operated seasonally shall[~~must~~] be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 [~~C601 and D105~~] prior to each season's use. A satisfactory bacteriologic sample shall[~~must~~] be achieved prior to use. During the non-use period, care shall[~~must~~] be taken to close all openings into the system.

(7)[~~4.7~~] Pump Lubricants

All oil lubricated pumps for culinary wells shall[~~must~~] utilize mineral oils suitable for human consumption as determined by the Executive Secretary. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-105-11. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

[~~R309-102-5.~~]R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2000 International [~~10 of the Uniform~~] Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall[~~must~~] be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities .

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall[~~must~~] be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper

documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(5) Suppliers serving areas also served by a pressurized irrigation system shall[~~must~~] prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code[~~ Annotated 1953 as amended~~].

[~~R309-102-6. Monitoring, Reporting and Keeping Records of Finished Water Quality.~~]R309-105-13. Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215[~~R309-104~~] to determine if the water quality standards of R309-200[~~R309-103~~] have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220[~~R309-104~~].

[~~R309-102-7.~~]R309-105-14. Operational Reports.

(1)[~~7.1~~] Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c)[~~R309-104-4.7.2.c~~].

(b) Certifications may rely on manufacturers data.

(2)(a)[~~7.2~~] All water systems using chemical addition or specialized equipment for the treatment of drinking water shall[~~must~~] regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

[~~R309-102-8.~~]R309-105-15. Annual Reports.

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided should include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.

[~~a. the status of all water system projects started during the previous year;~~
~~b. water demands met by the system;~~
~~c. problems experienced;~~
~~d. anticipated projects.~~]

R309-105-16. Reporting Test Results.

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(2) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of bacteriologic analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Executive Secretary agency pursuant to R309-105-16 must be kept for three years after issuance.

[~~R309-102-9. Operator Certification.~~

~~All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water must have an appropriately certified operator in accordance with the requirements of the Drinking Water Board's Rules. Refer to R309-301, Required Certification Rules for Water Supply Operators in the State of Utah, for specific requirements.~~]

[~~R309-102-10.~~]R309-105-18. Emergencies.

(1) The Executive Secretary or the local health department shall[~~must~~] be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a)[~~1.~~] The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b)[~~2.~~] The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c)[~~3.~~] Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d)[~~4.~~] An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e)[~~5.~~] A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f)[~~6.~~] Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall[~~must~~] then contact the Division [~~of Drinking Water~~]in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage must be realistically considered.

{**DAR Note:** Because of publication constraints, the repealed text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}

KEY: drinking water, watershed management
August [~~15, 2000~~]12, 2002
Notice of Continuation April 16, 2001
19-4-104
63-46b-4

▼ ▼

Environmental Quality, Drinking Water
R309-103
(Changed to R309-200)
Water Quality Maximum Contaminant Levels (MCLS)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24986
FILED: 06/14/2002, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is to update and correct rule references to adhere to a reorganization of the Division's (R309) rules to maintain a more consistent referencing standard.

SUMMARY OF THE RULE OR CHANGE: The rule number is being changed from R309-103 to R309-200 and some sections have been relocated in this rule from other existing R309 rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ LOCAL GOVERNMENTS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ OTHER PERSONS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change does not add any additional requirements. There should be no additional compliance costs due to this rule change because it is just reorganizaing and clarifying.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Patti Fauver or Ken Bousfield at the above address, by phone at 801-536-4196 or 801-536-4207, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at pfauver@deq.state.ut.us or kbousfie@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.

[~~R309-103. Water Quality Maximum Contaminant Levels (MCLs).~~]R309-200. Monitoring and Water Quality: Drinking Water Standards.

R309-200-1. Purpose.

The purpose of this rule is to set forth the water quality and drinking water standards for public water systems.

R309-200-2 Authority.
R309-200-3 Definitions.
R309-200-4 General.
R309-200-5 Primary Drinking Water Standards
(1) Inorganic Contaminants
(2) Lead and Copper
(3) Organic Monitoring.
(4) Radiological Chemicals.
(5) Turbidity.
(6) Microbiological quality
(7) Disinfection
R309-200-6 Secondary Drinking Water Standards.
R309-200-7 Treatment Techniques and Unregulated Contamiants.
R309-200-8 Approved Laboratories.

R309-200-2. 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 of the Utah Code and in accordance with 63-46a fo the same, known as the Administrative Rulemaking Act.

R309-200-3. Definitions.

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

[~~R309-103-1.~~]R309-200-4. General.

(1) Maximum contaminant levels (MCLs) and treatment techniques are herein established for those routinely measurable substances which may be found in water supplies. "Primary" standards and treatment techniques are established for the protection of human health. "Secondary" regulations are established to provide guidance in evaluating the aesthetic qualities of drinking water.

(2) The applicable "Primary" standards and treatment techniques must be met by all public drinking water systems. The "Secondary" standards are recommended levels which should be met in order to avoid consumer complaint.

(3) The methods used to determine compliance with these maximum contaminant levels and treatment techniques are given in R309-205 through R309-215[~~R309-104~~]. Analytical techniques which must be followed in making the required determinations shall be as given in 40 CFR 141 as published on July 1, 2001[~~1993~~] by the Office of the Federal Register.

(4) Unless otherwise required by the Board, the effective dates on which new analytical methods shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001[~~1993~~] by the Office of the Federal Register.

(5) If the water fails to meet these minimum standards, then certain public notification procedures must be carried out, as outlined in R309-220. Water suppliers must also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

[~~R309-103-2.~~]R309-200-5. Primary Drinking Water Standards.

(1)[~~2.1~~] Inorganic Contaminants.

(a)[~~a.~~] The maximum contaminant levels (MCLs) for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sodium, thallium and total dissolved solids are applicable to community and non-transient non-community water systems.

(b)[~~b.~~] The MCLs for nitrate, nitrite, and total nitrate, nitrite and sulfate are applicable to community, non-transient non-community, and transient non-community water systems.

(c)[~~c.~~] The maximum contaminant levels for inorganic chemicals are listed in Table 200-1[~~103-1~~].

TABLE 200-1[~~103-1~~]
PRIMARY INORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Antimony	0.006 mg/l
2. Arsenic	0.05 mg/l
3. Asbestos	7 Million Fibers/liter (longer than 10 um)
4. Barium	2 mg/l
5. Beryllium	0.004 mg/l
6. Cadmium	0.005 mg/l
7. Chromium	0.1 mg/l
8. Cyanide (as free Cyanide)	0.2 mg/l
9. Fluoride	4.0 mg/l
10. Mercury	0.002 mg/l
11. Nickel	--- (see Note 1 below)
12. Nitrate	10 mg/l (as Nitrogen) (see Note 4 below)
13. Nitrite	1 mg/l (as Nitrogen)
14. Total Nitrate and Nitrite	10 mg/l (as Nitrogen)
15. Selenium	0.05 mg/l
16. Sodium	--- (see Note 1 below)
17. Sulfate	1000 mg/l (see Note 2 below)
18. Thallium	0.002 mg/l
19. Total Dissolved Solids	2000 mg/l (see Note 3 below)

NOTE:
(1) No maximum contaminant level has been established for nickel and sodium. However, these contaminant must be monitored and reported in accordance with the requirements of R309-205-5(3)[~~R309-104-4.1.3~~].
(2) If the sulfate level of a public (community, NTNC and non-community) water system is greater than 500 mg/l, the supplier must satisfactorily demonstrate that:
(a) No better quality water is available, and
(b) The water shall not be available for human consumption from commercial establishments.
In no case shall the Board allow the use of water having a sulfate level greater than 1000 mg/liter.

(3) If TDS is greater than 1000 mg/l, the supplier shall satisfactorily demonstrate to the Board that no better water is available. The Board shall not allow the use of an inferior source of water if a better source of water (i.e. lower in TDS) is available.

(4) In the case of a non-community water systems which exceed the MCL for nitrate, the Executive Secretary may allow, on a case-by-case basis, a nitrate level not to exceed 20 mg/l if the supplier can adequately demonstrate that:

(a) such water will not be available to children under 6 months of age as may be the case in hospitals, schools and day care centers; and

(b) there will be continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effect of exposure in accordance with R309-220-12; and

(c) the water is analyzed in conformance to R309-205-5(4)[~~R309-104-4.1.4~~]; and

(d) that no adverse health effects will result.

(2)[~~2.2~~] Lead and copper.

(a)[~~a.~~] The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with R309-210-6(3)[~~R309-104-4.2.3~~] is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(b)[~~b.~~] The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with R309-210-6(3)[~~R309-104-4.2.3~~] is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(c)[~~c.~~] The 90th percentile lead and copper levels shall be computed as follows:

(i)[~~1.~~] The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(ii)[~~2.~~] The number of samples taken during the monitoring period shall be multiplied by 0.9.

(iii)[~~3.~~] The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(ii)[~~c.2~~] above is the 90th percentile contaminant level.

(iv)[~~4.~~] For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(3)[~~2.3~~] Organic Contaminants.

The following are the maximum contaminant levels for organic chemicals. For the purposes of R309-100 through R309-R309-605[~~R309-101 through R309-113~~], organic chemicals are divided into three categories: Pesticides/PCBs/SOCs, volatile organic contaminants (VOCs) and total trihalomethanes.

(a)[~~a.~~] Pesticides/PCBs/SOCs - The MCLs for organic contaminants list in Table 200-2[~~103-2~~] are applicable to community water systems and non-transient, non-community water systems.

TABLE 200-2[~~103-2~~]
PESTICIDE/PCB/SOC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Alachlor	0.002 mg/l
2. Aldicarb	(see Note 1 below)
3. Aldicarb sulfoxide	(see Note 1 below)
4. Aldicarb sulfone	(see Note 1 below)
5. Atrazine	0.003 mg/l
6. Carbofuran	0.04 mg/l
7. Chlordane	0.002 mg/l
8. Dibromochloropropane	0.0002 mg/l
9. 2,4-D	0.07 mg/l
10. Ethylene dibromide	0.00005 mg/l
11. Heptachlor	0.0004 mg/l
12. Heptachlor epoxide	0.0002 mg/l
13. Lindane	0.0002 mg/l
14. Methoxychlor	0.04 mg/l
15. Polychlorinated biphenyls	0.0005 mg/l
16. Pentachlorophenol	0.001 mg/l
17. Toxaphene	0.003 mg/l
18. 2,4,5-TP	0.05 mg/l
19. Benzo(a)pyrene	0.0002 mg/l
20. Dalapon	0.2 mg/l
21. Di(2-ethylhexyl)adipate	0.4 mg/l
22. Di(2-ethylhexyl)phthalate	0.006 mg/l
23. Dinoseb	0.007 mg/l
24. Diquat	0.02 mg/l
25. Endothall	0.1 mg/l
26. Endrin	0.002 mg/l
27. Glyphosate	0.7 mg/l
28. Hexachlorobenzene	0.001 mg/l
29. Hexachlorocyclopentadiene	0.05 mg/l
30. Oxamyl (Vydate)	0.2 mg/l
31. Picloram	0.5 mg/l
32. Simazine	0.004 mg/l
33. 2,3,7,8-TCDD (Dioxin)	0.00000003 mg/l

Note 1: The MCL for this contaminant is under further review, however, this contaminant shall be monitored in accordance with R309-205-6(1)[~~R309-104-4.3.1~~].

(b)[~~b.~~] Volatile organic contaminants - The maximum contaminant levels for organic contaminants listed in Table 200-3[~~103-3~~] apply to community and non-transient non-community water systems.

TABLE 200-3[~~103-3~~]
VOLATILE ORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Vinyl chloride	0.002 mg/l
2. Benzene	0.005 mg/l
3. Carbon tetrachloride	0.005 mg/l
4. 1,2-Dichloroethane	0.005 mg/l
5. Trichloroethylene	0.005 mg/l
6. para-Dichlorobenzene	0.075 mg/l
7. 1,1-Dichloroethylene	0.007 mg/l
8. 1,1,1-Trichloroethane	0.2 mg/l
9. cis-1,2-Dichloroethylene	0.07 mg/l
10. 1,2-Dichloropropane	0.005 mg/l
11. Ethylbenzene	0.7 mg/l
12. Monochlorobenzene	0.1 mg/l
13. o-Dichlorobenzene	0.6 mg/l
14. Styrene	0.1 mg/l
15. Tetrachloroethylene	0.005 mg/l
16. Toluene	1 mg/l
17. trans-1,2-Dichloroethylene	0.1 mg/l
18. Xylenes (total)	10 mg/l
19. Dichloromethane	0.005 mg/l
20. 1,2,4-Trichlorobenzene	0.07 mg/l
21. 1,1,2-Trichloroethane	0.005 mg/l

(c) Disinfection Byproducts[~~c. Total Trihalomethanes~~] - The following maximum contaminant level applies to community water systems serving a population of 10,000 or more.

The MCL for total trihalomethane (TTHM) compounds for community water systems serving a population of 10,000 or more shall be either of the following:

(i)[~~1.~~] The running average of analyses of quenched TTHM samples for four consecutive calendar quarters shall not exceed 100 micrograms per liter.

(ii)[~~2.~~] The single sample Total Trihalomethane Formation Potential (THMFP) shall not exceed 100 micrograms per liter. Approval is needed from the Executive Secretary to substitute this test for TTHM samples and may only be used for groundwater sources. Compliance for each source is based on measurement of this sample.

(4)[~~2.4~~] Radiologic Chemicals - applies to community water systems.

(a)[~~a.~~] Radium-226, Radium-228 and gross alpha particle radioactivity in community water systems:

The following are the maximum contaminant levels for Radium-226, Radium-228, and gross alpha particle radioactivity:

(i)[~~1.~~] Combined Radium-226 and Radium-228: 5 pCi/l.

(ii)[~~2.~~] Gross alpha particle activity (including Radium-226 but excluding Radon and Uranium): 15 pCi/l.

(b)[~~b.~~] Beta particle and photon radioactivity from man-made radionuclides in community water systems:

(i)[~~1.~~] The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

(ii)[~~2.~~] Except for the radionuclides listed in Table 200-4[~~103-4~~], the concentration of man-made radionuclides causing four mrem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration of Radionuclides in Air or Water or Occupational Exposure", NBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

TABLE 200-4[~~103-4~~]
MAN-MADE RADIONUCLIDE CONTAMINANTS

Average annual concentrations assumed to produce a total body or organ dose of four mrem/year.

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

(5)[~~2.5~~] TURBIDITY

(a)[~~a.~~] Surface water sources or ground water sources under the direct influence of surface water:

(i)[~~1.~~] The following turbidity limit applies to finished water from water treatment facilities providing water to all public water systems whether community, non-transient non-community or non-community.

(ii)[~~2.~~] The limit for turbidity in drinking water from treatment facilities which utilize surface water sources or ground water sources under the direct influence of surface water is 0.5 NTU in at least 95 percent of the samples as required by R309-205-8(1)(c) [~~R309-104-4.5.1.c~~] for conventional complete treatment and direct filtration. If the Executive Secretary determines that the system is capable of achieving at least 99.9 percent removal and inactivation of Giardia lamblia cysts at some turbidity level higher than 0.5 NTU in at least 95 percent of the measurements, the Executive Secretary may substitute this higher turbidity limit for that system. However, in no case may the Executive Secretary approve a turbidity limit that allows more than 1.0 NTU in more than 5 percent of the samples taken each month, measured as specified in R309-205-8(1)(c) and (d) [~~R309-104-4.5.1.c and d~~].

(A) The turbidity limit for slow sand filtration and diatomaceous earth filtration must be less than or equal to 1.0 NTU in at least 95 percent of the measurements taken each month, measured as specified in R309-205-8(1)(c) and (d) [~~R309-104-4.5.1.c and d~~]. For slow sand filtration only, if the Executive Secretary determines that the system is capable of achieving 99.9 percent removal and inactivation of Giardia lamblia cysts at some turbidity level higher than 1.0 NTU in at least 95 percent of the measurements, the Executive Secretary may substitute this higher turbidity limit for that system.

(B) The turbidity level of representative samples must at no time exceed 5.0 NTU for any treatment technique, measured as specified in R309-205-8(1)(c) and (d)[~~R309-104-4.5.1.c and d~~].

(C) The Executive Secretary may allow the higher turbidity limits for the above treatment techniques only if the supplier of water can demonstrate to the Executive Secretary's satisfaction that the higher turbidity does not do any of the following:

(I)[~~(a)~~] Interfere with disinfection;

(II)[~~(b)~~] Prevent maintenance of an effective disinfectant agent throughout the distribution system;

(III)[~~(c)~~] Interfere with microbiological determinations; or

(IV)[~~(d)~~] Interfere with a treatment technique's ability to achieve the required log removal/inactivation of pathogens or virus as required by R309-505-6(2)(a) and (b)[~~R309-108-5(2)(a) and (b)~~].

(b)[~~b.~~] Ground water sources not under the direct influence of surface water:

(i)[~~1.~~] The following turbidity limit applies to community water systems only.

(ii)[~~2.~~] The limit for turbidity in drinking water from ground water sources not contaminated by surface sources is 5.0 NTU based on an average for two consecutive days pursuant to R309-205-8(3)[~~R309-104-4.5.3~~].

(6)[~~2.6~~] MICROBIOLOGICAL QUALITY

(a)[~~a.~~] The maximum contaminant level (MCL) for microbiological contaminants for all public water systems is:

(i)[~~1.~~] For a system which collects less than 40 total coliform samples per month, no more than one sample per month may be total coliform-positive.

(ii)[~~2.~~] For a system which collects 40 or more total coliform samples per month, no more than 5.0 percent of the samples collected during a month may be total coliform-positive.

(b)[~~b.~~] Any fecal coliform-positive or Escherichia coliform (E. coli)-positive repeat sample or any total coliform-positive repeat sample following a fecal coliform positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For the purposes of public notification requirements in R309-220-5 [~~R309-104-7~~] this is a violation that may pose an acute risk to health.

(c)[~~c.~~] For NTNC and transient non-community systems that are required to sample at a rate of less than one per month, compliance with paragraphs (a) or (b)[~~a. or b.~~] of this subsection shall be determined for the month in which the sample was taken.

(7)[~~2.7~~] DISINFECTION

Continuous disinfection is recommended for all water sources. It shall be required of all ground water sources which do not consistently meet standards of bacteriologic quality. Surface water sources or ground water sources under direct influence of surface water must be disinfected and continuously monitored for

disinfection residual during the course of required conventional complete treatment for systems serving greater than 3,300 people. Disinfection shall not be considered a substitute for inadequate collection or filtration facilities.

Successful disinfection assures 99.9 percent inactivation of Giardia lamblia cysts and 99.99 percent inactivation of enteric viruses. Both filtration and disinfection are considered treatment techniques to protect against the potential adverse health effects of exposure to Giardia lamblia, viruses, Legionella, and heterotrophic bacteria in water. Minimum disinfection levels are set by "CT" values as defined in R309-110[~~R309-103-5~~].

(a)[~~a.~~] Each public water system that provides filtration treatment must provide disinfection treatment as follows:

(i)[~~1.~~] The disinfection treatment must be sufficient to ensure that the total treatment processes of the system achieve at least 99.9 percent (3-log) inactivation and/or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses, as determined by the Executive Secretary.

(ii)[~~2.~~] The residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 mg/l for more than 4 hours.

(iii)[~~3.~~] The residual disinfectant concentration in the distribution system, measured as combined chlorine or chlorine dioxide, cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value "V" in the following formula cannot exceed 5 percent in one month, for any two consecutive months.

V = ((c + d + e) / (a + b)) x 100 where:

a = number of instances where the residual disinfectant concentration is measured;

b = number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml;

e = number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(b)[~~b.~~] If the Executive Secretary determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Heterotrophic Plate Count (Pour Plate Method) as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al. (Method 907A in the 16th edition) and that the system is providing adequate disinfection in the distribution system, the requirements of R309-200-5(7)(a)(iii)[~~R309-103-2.7a(3)~~] do not apply.

(c)[~~c.~~] If a system utilizes a combination of sources, some surface water influenced (requiring filtration and disinfection treatment) and others deemed ground water (not requiring any treatment, even disinfection), the Executive Secretary may, based on site-specific considerations, allow sampling for residual disinfectant or HPC at locations other than those specified by total coliform monitoring required by R309-210-5[~~R309-104-4.6~~].

[~~R309-103-3.~~]R309-200-6. Secondary Drinking Water Standards for Community, Non-Transient Non-Community and Transient Non-Community Water.

The Secondary Maximum Contaminant Levels for public water systems deals with substances which affect the aesthetic quality of drinking water. They are presented here as recommended limits or ranges and are not grounds for rejection. The taste of water may be unpleasant and the usefulness of the water may be impaired if these standards are significantly exceeded.

TABLE 200-5 [~~103-5~~]
SECONDARY INORGANIC CONTAMINANTS

Contaminant	Level
Aluminum	0.05 to 0.2 mg/l
Chloride	250 mg/l
Color	15 Color Units
Copper	1 mg/l
Corrosivity	Non-corrosive
Fluoride	2.0 mg/l (see Note below)
Foaming Agents	0.5 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/l
Odor	3 Threshold Odor Number
pH	6.5-8.5
Silver	0.1 mg/l
Sulfate	250 mg/l (see Note below)
TDS	500 mg/l (see Note below)
Zinc	5 mg/l

Note: Maximum allowable Fluoride, TDS and Sulfate levels are given in the Primary Drinking Water Standards, R309-200-5(1)[~~R309-103-2.1~~]. They are listed as secondary standards because levels in excess of these recommended levels will likely cause consumer complaint.

[~~R309-103-4.~~]R309-200-7. Treatment Techniques and Unregulated Contaminants.

No MCLs are established herein for unregulated contaminants; viruses, protozoans and other chemical and biological substances. Some unregulated contaminants must be monitored for in accordance with 40 CFR 141.40 [~~R309-104-5~~]. The Board has determined that the minimum level of treatment as described in R309-525 and R309-530 [~~R309-107 and R309-108~~] herein or its equivalent is required for surface water sources and ground water contaminated by surface sources.

R309-200-8. Approved Laboratories.

(1) For the purpose of determining compliance, samples may be considered only if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory. However, measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible charge operator, be performed by any water supplier or their representative.

(2) All samples must be marked either: routine, repeat, check or investigative before submission of such samples to a certified lab. Routine, repeat, and check samples shall be considered compliance purposes samples.

(3) All public water systems must either: contract with a certified laboratory to have the laboratory send all compliance purposes sample results, with the exception of Lead/Copper data, to the Division of Drinking Water, or must inform the Division of Drinking Water that they intend to forward all compliance purposes samples to the Division. Each public water system must furnish the Division of Drinking Water a copy of the contract with their

certified laboratory or inform the Division in writing of the public water system's intent to forward the data to the Division.

(4) All sample results can be sent either electronically or in hard copy form.

{**DAR Note:** Because of publication constraints, the repealed text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}

KEY: drinking water, quality standards, regulated contaminants[~~environmental protection, administrative procedure~~]
[~~December 8, 1997~~]August 12, 2002
Notice of Continuation April 16, 2001
19-4-104
63-46b-4

▼ ▼

Environmental Quality, Drinking Water
R309-104
(Changed to R309-205)
Monitoring, Reporting and Public Notification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24984
FILED: 06/14/2002, 15:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is to update and correct rule references to adhere to a reorganization of the Division's rules (R309) to maintain a more consistent referencing standard.

SUMMARY OF THE RULE OR CHANGE: The rule number is being changed from R309-104 to R309-205, and existing requirements have been divided into several rules. Some requirements stay in Rule R309-205, and most of the rest are in the newly created Rules R309-210, R309-215, and R309-220. Some small sections have been relocated to Rule R309-105 (formerly Rule R309-102) and Rule R309-200 (formerly Rule R309-103). The following is a quick reference of existing language to new language or new location: Section R309-104-1 goes to Sections R309-205-4, R309-210-4, R309-215-4, and R309-105-5; Section R309-104-2 goes to Section R309-105-5; Section R309-104-3 goes to Section R309-200-8; Subsection R309-104-4(4.1) goes to Section R309-205-5; Subsection R309-104-4(4.1.1) goes to Subsection R309-205-5(1); Subsection R309-104-4(4.1.2) goes to Subsection R309-205-5(2); Subsection R309-104-4(4.1.3) goes to Subsection R309-205-5(3); Subsection R309-104-4(4.1.4) goes to Subsection R309-205-5(4); Subsection R309-104-4(4.1.5) goes to Subsection R309-205-5(5); Subsection R309-104-4(4.1.6) goes to Subsection R309-205-5(1); Subsection R309-104-4(4.1.7) goes to Subsection R309-205-5(1); Subsection R309-104-4(4.2) goes to Section R309-210-6; Subsection R309-104-4(4.2.1) goes to Subsection R309-210-6(1); Subsection R309-104-4(4.2.2) goes to Subsection R309-210-6(2); Subsection R309-104-4(4.2.3) goes to Subsection R309-210-6(3); Subsection R309-104-4(4.2.4) goes to Subsection R309-210-6(4); Subsection R309-104-4(4.2.4)(a) goes to Subsection R309-210-6(4)(a); Subsection R309-104-4(4.2.4)(b) goes to Subsection R309-210-6(4)(b); Subsection R309-104-4(4.2.4)(c) goes to Subsection R309-210-6(4)(c); Subsection R309-104-4(4.2.5) goes to Subsection R309-210-6(5); Subsection R309-104-4(4.2.6) goes to Subsection R309-210-6(6); Subsection R309-104-4(4.2.7) goes to Subsection R309-210-6(7); Subsection R309-104-4(4.2.8) goes to Subsection R309-210-6(8); Subsection R309-104-4(4.3) goes to Section R309-205-6; Subsection R309-104-4(4.3.1) goes to Subsection R309-205-6(1); Subsection R309-104-4(4.3.2) goes to Subsection R309-205-6(2); Subsection R309-104-4(4.3.3) goes to Section R309-210-8; Subsection R309-104-4(4.4) goes to Section R309-205-7; Subsection R309-104-4(4.5) goes to Section R309-205-8 and Subsection R309-215-7(3); Subsection R309-104-4(4.6) goes to Section R309-210-5; Subsection R309-104-4(4.7) goes to Section R309-215-7; Section R309-104-5 is being deleted; Section R309-104-6 goes to Section R309-105-16; Section R309-104-7 goes to Rule R309-220; Section R309-104-8 goes to Section R309-105-17; Section R309-104-9 goes to Sections R309-205-3, R309-210-3, R309-215-3, and Rule R309-110; Table 104-1 goes to Table 210-3; Table 104-2 goes to Table 210-4; Table 104-3 goes to Table 210-5; Table 104-4 goes to Table 210-6; Table 104-5 goes to Table 210-1; Table 104-6 goes to Table 210-2; Table 104-7 goes to Table 215-1; and Table 104-8 goes to Table 215-2

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This rule change does not add any additional requirements because it is just reorganizing.
❖ LOCAL GOVERNMENTS: No impact--This rule change does not add any additional requirements because it is just reorganizing.
❖ OTHER PERSONS: No impact--This rule change does not add any additional requirements because it is just reorganizing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change does not add any additional requirements. There should be no additional compliance costs due to this rule change because it is just reorganizing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:

Ken Bousfield or Patti Fauver at the above address, by phone at 801-536-4207 or 801-536-4196, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at kbousfie@deq.state.ut.us or pfauver@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

{**DAR Note:** Because of publication constraints, the repealed text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}

R309. Environmental Quality, Drinking Water.

~~[R309-104. Monitoring, Reporting and Public Notification.]~~R309-205. Monitoring and Water Quality: Source Monitoring Requirements.

R309-205-1. Purpose.

The purpose of this rule is to outline the monitoring requirements for public water systems with regard to their water sources.

R309-205-2. Authority.
R309-205-3. Definitions.
R309-205-4. General.
R309-205-5. Inorganic Chemical Monitoring
(1) Monitoring Protocols and Compliance Determinations
(2) Asbestos Source Monitoring
(3) Inorganic and Metals Monitoring
(4) Nitrate Monitoring
(5) Nitrite Monitoring.
R309-205-6. Organic Monitoring.
(1) Pesticide/PCBs/SOCs
(2) Volatile Organic Contaminant Monitoring
R309-205-7. Radiological Chemical Monitoring.
R309-205-8. Turbidity Monitoring.

R309-205-2. 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 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-205-3. Definitions.

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

R309-205-4. General.

(1) All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-200. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

(3) If the water fails to meet minimum standards, then certain public notification procedures must be carried out, as outlined in R309-220. Water suppliers must also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

(4) All samples shall be taken at each source or point of entry to the distribution system as specified herein for each contaminant or group of contaminants.

(5) For the purpose of determining compliance, samples may only be considered if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory.

(6) Measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible operator, be performed by any water supplier or their representative.

(7) All samples must be marked either: routine, repeat, check or investigative before submission of such samples to a certified laboratory. Routine, repeat, and check samples shall be considered compliance purpose samples.

(8) All sample results can be sent to the Division of Drinking Water either electronically or in hard copy form.

(9) Unless otherwise required by the Board, the effective dates on which required monitoring shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001 by the Office of the Federal Register.

(10) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

. . . . . .

~~[R309-104-4. Water Quality Monitoring Requirements.]~~R309-205-5. Inorganic Contaminants.

~~[4.1 Inorganic Contaminants.]~~

Community, non-transient non-community, and transient non-community water systems shall conduct monitoring as specified to determine compliance with the maximum contaminant levels specified in [~~R309-103-2~~]R309-200-5 in accordance with this section.

(1)[~~4.1.1~~] Monitoring shall be conducted as follows:

(a)[~~a.~~] Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the compliance period starting January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(b)[~~b.~~] Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the compliance period beginning January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. (Note: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.)

(c)[~~c.~~] If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(d)[~~d.~~] The frequency of monitoring for asbestos shall be in accordance with R309-205-5(2)[~~R309-104-4.1.2~~]; the frequency of monitoring for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sodium, sulfate, thallium, and total dissolved solids shall be in accordance with R309-205-5(3)[~~R309-104-4.1.3~~]; the frequency of monitoring for nitrate shall be in accordance with R309-205-5(4)[~~R309-104-4.1.4~~]; the frequency of monitoring for nitrite shall be in accordance with R309-205-5(5)[~~R309-104-4.1.5~~].

(e) Confirmation samples:

(i) Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sulfate, thallium or total dissolved solids indicate an exceedance of the maximum contaminant level, the Executive Secretary may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

(ii) Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers in the area served by the public water system source in accordance with R309-220-5. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

(iii) Procedures if the Secondary Standard for Fluoride is Exceeded Notification of State and/or Public.

If the result of an analysis indicates that the level of fluoride exceeds the Secondary Drinking Water Standard, the supplier of water shall give notice as required in R309-220-11.

(iv) The results of the initial and confirmation sample(s) taken for any contaminant, shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with paragraph (1)(g) of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors.

(f) The Executive Secretary may require more frequent monitoring than specified in paragraphs (2), (3), (4) and (5) of this section or may require confirmation samples for positive and negative results. The Executive Secretary may also require an appropriate treatment process.

(g) Compliance with R309-200-5(1) shall be determined based on the analytical result(s) obtained at each sampling point.

(i) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sulfate, thallium and total dissolved solids is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the detection limit shall be calculated at zero for the purpose of determining the annual average.

(ii) For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sulfate, thallium and total dissolved solids if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the Executive Secretary, the determination of compliance will be based on the average of the two samples. If the average of the samples exceed the maximum contaminant levels then the water system shall provide public notice as required under R309-220.

(iii) Compliance with the maximum contaminant levels for nitrate and nitrite is determined based on one sample. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with paragraph (1)(g)(ii) of this section, and compliance shall be determined based on the average of the initial and confirmation samples.

(iv) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the Executive Secretary may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

(h) Each public water system shall monitor at the time designated by the Executive Secretary during each compliance period.

(2)[4.1.2] The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in R309-200-5(1)[~~R309-103-2.1~~] shall be conducted as follows:

(a)[~~a.~~] Each community and non-transient non-community water system is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(b)[~~b.~~] If the system believes it is not vulnerable to [~~either~~] asbestos contamination in its source water [~~or due to corrosion of asbestos-cement pipe, or both~~], it may apply to the Executive Secretary for a waiver of the monitoring requirement in paragraph (a)[~~4.1.2.a.~~] of this section. If the Executive Secretary grants the waiver, the system is not required to monitor for asbestos.

(c)[~~c.~~] The Executive Secretary may grant a waiver based on a consideration of the potential[~~following factors:~~

~~1. Potential~~] asbestos contamination of the water source.[~~, and~~

~~2. The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.~~]

(d)[~~d.~~] A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the provisions of paragraph (a)[~~4.1.2.a.~~] of this section.

(e)[~~e. A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.~~]

~~f.~~] A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of R309-205-5(1)[~~paragraph 4.1.1. of this section~~].

(f)[~~g.~~] A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe as specified in R309-210-7 shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(g)[~~h.~~] A system which exceeds the maximum contaminant levels as determined in R309-205-5(1)(g)[~~R309-104-4.1.8.~~] shall monitor quarterly beginning in the next quarter after the violation occurred.

(h)[~~i.~~] The Executive Secretary may decrease the quarterly monitoring requirement to the frequency specified in paragraph (a)[~~4.1.2.a.~~] of this section provided the Executive Secretary has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

(i)[~~j.~~] If monitoring data collected after January 1, 1990 are generally consistent with the requirements of R309-205-5(2)[~~R309-104-4.1.2.~~], then the Executive Secretary may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(3)[~~4.1.3.~~] The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in R309-200-5(1)[~~R309-103-2.1~~]. for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sodium, sulfate, thallium and total dissolved solids shall be as follows:

(a)[~~a.~~] Each community and non-transient non-community groundwater system shall take one sample at each sampling point once every three years. Each community and non-transient non-community surface water system (or combined surface/ground) shall take one sample annually at each sampling point. Each transient non-community system shall take one sample for sulfate only at each sampling point once every three years for both groundwater and surface water systems.

(b)[~~b.~~] The system may apply to the Executive Secretary for a waiver from the monitoring frequencies specified in paragraph (3)(a)[~~4.1.3.a.~~] of this section. A waiver from the monitoring requirements for arsenic shall not be available.

(c)[~~c.~~] A condition of the waiver shall require that a system shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(d)[~~d.~~] The Executive Secretary may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) Both surface and groundwater systems shall demonstrate that all previous analytical results were less than the maximum contaminant level. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(e)[~~c.~~] In determining the appropriate reduced monitoring frequency, the Executive Secretary shall consider:

(i)[~~1.~~] Reported concentrations from all previous monitoring;

(ii)[~~2.~~] The degree of variation in reported concentrations; and

(iii)[~~3.~~] Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

(f)[~~f.~~] A decision by the Executive Secretary to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the Executive Secretary or upon an application by the public water system. The public water system shall specify the basis for its request. The Executive Secretary shall review and, where appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency become available.

(g)[~~g.~~] Systems which exceed the maximum contaminant levels as calculated in R309-205-5(1)(g)[~~R309-104-4.1.8.~~] of this section shall monitor quarterly beginning in the next quarter after the violation occurred.

(h)[~~h.~~] The Executive Secretary may decrease the quarterly monitoring requirement to the frequencies specified in paragraphs (3)(a) and (b)[~~4.1.3.a. and 4.1.3.b.~~] of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(4)[~~4.1.4.~~] All public water systems (community; non-transient non-community; and transient non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrate in R309-200-5(1)[~~R309-103-2.1~~].

(a)[~~a.~~] Community and non-transient non-community water systems served by groundwater systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(b)[~~b.~~] For community and non-transient non-community water systems, the repeat monitoring frequency for ground water systems shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 50 percent of the MCL. The Executive Secretary may allow a groundwater system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the MCL.

(c)[~~c.~~] For community and non-transient non-community water systems, the Executive Secretary may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are less than 50 percent of the MCL. A surface water system shall return to quarterly monitoring if any one sample is greater than or equal to 50 percent of the MCL.

(d)[~~d.~~] Each transient non-community water system shall monitor annually beginning January 1, 1993.

(e)[~~e.~~] After the initial round of quarterly sampling is completed, each community and non-transient non-community system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(5)[~~4.1.5.~~] All public water systems (community; non-transient non-community; and transient non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrite in R309-200-5(1)[~~R309-103-2.1~~].

(a)[~~a.~~] All public water systems shall take one sample at each sampling point in the compliance period beginning January 1, 1993 and ending December 31, 1995.

(b)[~~b.~~] After the initial sample, systems where an analytical result for nitrite is less than 50 percent of the MCL shall monitor at the frequency specified by the Executive Secretary.

(c)[~~c.~~] For community, non-transient non-community, and transient non-community water systems, the repeat monitoring frequency for any water system shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 50 percent of the MCL. The Executive Secretary may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than the MCL.

(d)[~~d.~~] Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

. . . . . .

R309-205-6. Organic Contaminants.

[~~4.3 Organic Contaminants~~]

For the purposes of R309-100 through R309-605 [~~R309-101. through R309-113.~~], organic chemicals are divided into three categories: Pesticides/PCBs/SOCs, volatile organic contaminants (VOCs) and total trihalomethanes.

(1)[~~4.3.1~~] Pesticides/PCBs/SOCs monitoring requirements.

Analysis of the contaminants listed in R309-200-5(2)(a)[~~R309-103-2.3.a~~] for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows:

(a)[~~a.~~] Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(b)[~~b.~~] Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. (Note: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.)

(c)[~~c.~~] If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(d)[~~d.~~] Monitoring frequency:

(i)[~~1.~~] Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in R309-200-5(2)(a)[~~R309-103-2.3.a~~] during each compliance period beginning with the compliance period starting January 1, 1993. For systems serving less than 3,300, this requirement may be reduced to one sample if the sample is taken prior to October 1, 1993.

(ii)[~~2.~~] Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period, may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period.

(iii)[~~3.~~] Systems serving less than or equal to 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

(e)[~~e.~~] Each community and non-transient non-community water system may apply to the Executive Secretary for a waiver from the requirement of paragraph (d)[~~4.3.1.d~~] of this section. A system must reapply for a waiver for each compliance period.

(f)[~~f.~~] The Executive Secretary may grant: a use waiver, a susceptibility waiver or a reliably and consistently waiver. The use and susceptibility waivers shall be granted in accordance with R309-600-16[~~R309-113-15~~]. The reliably and consistently waiver shall be based on a minimum of three rounds of monitoring where the results of analysis for all constituents show that no contaminant is detected, or that the detected amount of a contaminant is less than half the MCL.

(i) If a use waiver is granted no monitoring for pesticides/PCBs/SOCs will be required, provided documentation consistent with R309-600-16[~~R309-113-15~~] and justifying the continuence of a use waiver is submitted to the Executive Secretary at least every six years.

(ii) If a susceptibility waiver or a reliably and consistently waiver is granted, monitoring for pesticides/PCBs/SOCs shall be preformed as listed below, provided documentation consistent with R309-600-16 [~~R309-113-15~~] and justifying the continuance [~~continuence~~] of a susceptibility waiver is submitted to the Executive Secretary at least every six years or in the case of a reliably and consistently waiver that the analytical results justify the continuance [~~continuence~~] of the reliably and consistently waiver.

(A)[~~1.~~] For community and non-transient non community [~~comunity~~] systems serving populations greater than 3,300 people, samples for pesticides/PCBs/SOCs shall be taken in two consecutive quarters every three years.

(B)[~~2.~~] For community and non-transient non community systems serving populations less than 3,301 people, samples for pesticides/PCBs/SOCs shall be taken every three years.

(g)[~~g.~~] If an organic contaminant listed in R309-200-5(2)(a)[~~R309-103-2.3.a~~] is detected in any sample, then:

(i)[~~1.~~] Each system must monitor quarterly at each sampling point which resulted in a detection.

(ii)[~~2.~~] The Executive Secretary may decrease the quarterly monitoring requirement specified in paragraph (g)(i)[~~4.3.1.g.1~~] of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(iii)[~~3.~~] After the Executive Secretary determines the system is reliably and consistently below the maximum contaminant level the Executive Secretary may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(iv)[~~4.~~] Systems which have 3 consecutive annual samples with no detection of a contaminant may apply to the Executive Secretary for a waiver as specified in paragraph (f)[~~4.3.1.f~~] of this section.

(v)[~~5.~~] If monitoring results in detection of one or more of certain related contaminants (aldicarb, aldicarb sulfone, aldicarb sulfoxide and heptachlor, heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

(h)[~~h.~~] Systems which violate the maximum contaminant levels of R309-200-5(2)(a)[~~R309-103-2.3.a~~] as determined by paragraph (j)[~~4.3.1.j~~] of this section must monitor quarterly. After a minimum

of four quarterly samples show the system is in compliance and the Executive Secretary determines the system is reliably and consistently below the MCL, as specified in paragraph (j)[~~4.3.1.j~~] of this section, the system shall monitor at the frequency specified in paragraph (g)(iii)[~~4.3.1.g.3~~] of this section.

(i)[~~i.~~] The Executive Secretary may require a confirmation sample for positive or negative results. If a confirmation sample is required by the Executive Secretary, the result must be averaged with the first sampling result and the average used for the compliance determination as specified by paragraph (j)[~~4.3.1.j~~] of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

(j)[~~j.~~] Compliance with the maximum contaminant levels in R309-200-5(2)(a)[~~R309-103-2.3.a~~] shall be determined based on the analytical results obtained at each sampling point.

(i)[~~1.~~] For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

(ii)[~~2.~~] If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the Executive Secretary, the determination of compliance will be based on the average of two samples.

(iii)[~~3.~~] If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the Executive Secretary may allow the system to give public notice to only that portion of the system which is out of compliance.

(k)[~~k.~~] If monitoring data collected after January 1, 1990, are generally consistent with the other requirements of this section, then the Executive Secretary may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(l)[~~l.~~] The Executive Secretary may increase the required monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source).

(m)[~~m.~~] The Executive Secretary has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(n)[~~n.~~] Each public water system shall monitor at the time designated by the Executive Secretary within each compliance period.

(2)[~~4.3.2~~] Volatile organic contaminants monitoring requirements.

Analysis of the contaminants listed in R309-200-5(2)(b)[~~R309-103-2.3.b~~] for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

(a)[~~a.~~] Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant or within the distribution system.

(b)[~~b.~~] Surface water systems (or combined surface/ground) shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(c)[~~c.~~] If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(d)[~~d.~~] Each community and non-transient non-community water system shall initially take four consecutive quarterly samples for each contaminant listed in R309-200-5(2)(b), Table 200-3, numbers 2 through 21[~~R309-103-2.3.b.2 through b.21.~~] during each compliance period beginning in the initial compliance period. For systems serving a population of less than 3,300, this requirement may be reduced to one sample if the sample is taken prior to October 1, 1993.

(e)[~~e.~~] If the initial monitoring for contaminants listed in R309-200-5(2)(b), Table 200-3, numbers 2 through 21 [~~R309-103-2.3.b.2 through b.21.~~] as allowed in paragraph (n)[~~4.3.2.e~~] has been completed by December 31, 1992, and the system did not detect any contaminant listed in R309-200-5(2)(b)[~~R309-103-2.3.b~~], then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

(f)[~~f.~~] After a minimum of three years of annual sampling, the Executive Secretary may allow groundwater systems with no previous detection of any contaminant listed in R309-200-5(2)(b)[~~R309-103-2.3.b~~] to take one sample during each compliance period.

(g)[~~g.~~] Each community and non-transient non-community water system which does not detect a contaminant listed in R309-200-5(2)(b)[~~R309-103-2.3.b~~] may apply to the Executive Secretary for a waiver from the requirements of paragraph (d)[~~4.3.2.e~~] and (e)[~~4.3.2.f~~] of this section after completing the initial monitoring. (For the purposes of this section, detection is defined as greater than or equal to 0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods). The Executive Secretary may also issue waivers for the initial round of monitoring for 1,2,4-trichlorobenzene.

(h)[~~h.~~] The Executive Secretary may grant: a use waiver, a susceptibility waiver or a reliably and consistently waiver. The use and susceptibility waivers shall be granted in accordance with R309-600-16[~~R309-113-15~~]. The reliably and consistently waiver shall be based on a minimum of three rounds of monitoring where the results of analysis for all constituents show that no contaminant is detected, or that the detected amount of a contaminant is less than half the MCL. To maintain a use waiver or a susceptibility waiver a system shall submit documentation consistent with R309-600-16[~~R309-113-15~~] which justifies the continuance [~~continuence~~] of a use or a susceptibility waiver at least every six years. For a reliably and consistently waiver, the analytical results for all constituents of all samples must justify its continuance [~~continuence~~]. If a waiver is granted, monitoring for VOCs will be required at least every six years.

(i)[~~i.~~] As a condition of the waiver a groundwater system must take one sample at each sampling point during the time the waiver is

effective (i.e., one sample during two compliance periods or six years) and update its source protection plan in accordance with R309-600[~~R309-113~~].

(j)[~~j.~~] If a contaminant listed in R309-200-5(2)(b), Table 200-3, numbers 2 through 21 [~~R309-103-2.3.b.2 through b.21~~] is detected at a level exceeding 0.0005 mg/l in any sample, then:

(i)[~~1.~~] The system must monitor quarterly at each sampling point which resulted in a detection.

(ii)[~~2.~~] The Executive Secretary may decrease the quarterly monitoring requirement specified in paragraph (j)(i)[~~4.3.2.k.1~~] of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(iii)[~~3.~~] If the Executive Secretary determines that the system is reliably and consistently below the MCL, the Executive Secretary may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter(s) which previously yielded the highest analytical result.

(iv)[~~4.~~] Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Executive Secretary for a waiver as specified in paragraph (f)[~~4.3.2.g~~] of this section.

(v)[~~5.~~] Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds were detected. If the results of the first analysis do not detect vinyl chloride, the Executive Secretary may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the Executive Secretary.

(k)[~~k.~~] Systems which violate the maximum contaminant levels as required in R309-200-5(2)(b)[~~R309-103-2.3.b~~] as determined by paragraph (m)[~~4.3.2.n~~] of this section must monitor quarterly. After a minimum of four consecutive quarterly samples shows the system is in compliance as specified in paragraph (m)[~~4.3.2.n~~] of this section, and the Executive Secretary determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and time specified in paragraph (j)(iii)[~~4.3.2.k.3~~] of this section.

(l)[~~l.~~] The Executive Secretary may require a confirmation sample for positive or negative results. If a confirmation sample is required by the Executive Secretary, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph (m)[~~4.3.2.n~~] of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

(m)[~~m.~~] Compliance with R309-200-5(2)(b)[~~R309-103-2.3.b~~] shall be determined based on the analytical results obtained at each sampling point.

(i)[~~1.~~] For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

(ii)[~~2.~~] If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the Executive Secretary, the determination of compliance will be based on the average of two samples.

(iii)[~~3.~~] If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the Executive Secretary may allow the system to give public notice to only that area served by that portion of the system which is out of compliance.

(n)[~~n.~~] The Executive Secretary may allow the use of monitoring data collected after January 1, 1988 for purposes of monitoring compliance providing that the data is generally consistent with the other requirements in this section, the Executive Secretary may use that data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of paragraph (d)[~~4.3.2.d~~] of this section. Systems which use grandfathered samples and did not detect any contaminant listed in R309-200-5(2)(b)[~~R309-103-2.3.b~~] shall begin monitoring annually in accordance with (e)[~~4.3.2.e~~] of this section.

(o)[~~o.~~] The Executive Secretary may increase required monitoring where necessary to detect variations within the system.

(p)[~~p.~~] Each public water system shall monitor at the time designated by the Executive Secretary within each compliance period.

. . . . . .

R309-205-7. Radiological Contaminants.

[~~4.4 Radiological Chemicals~~]

(1)[~~4.4.1 Routine Monitoring Requirements~~

~~a.~~] Monitoring requirements for gross alpha particle activity, radium-226 and radium-228.

(a)[~~1.~~] Monitoring frequency for community and non-community systems -

(i)[~~(a)~~] Suppliers of water for community systems shall monitor at least once every four years. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly intervals, or the average of the analysis of four samples obtained at quarterly intervals.

(ii)[~~(b)~~] A supplier of water shall monitor for radiological chemicals within one year of the introduction of a new water source for a community water system.

(iii)[~~(c)~~] A community water system using two or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free-flowing tap, when ordered by the Executive Secretary.

(iv)[~~(d)~~] Suppliers of water for non-community systems need not monitor unless specifically directed by the Executive Secretary.

(b)[~~2.~~] Reduction of monitoring requirement -

(i)[~~(a)~~] At the discretion of the Executive Secretary when the average annual concentration is less than half the maximum contaminant levels as established by four consecutive quarterly samples, analysis of a single sample may be substituted for the quarterly sampling procedure.

(ii)[~~(b)~~] Monitoring for compliance need not include radium-228 except when required by the Executive Secretary provided that

the average annual concentration of radium-228 has been assayed at least once using the quarterly sampling procedure.

(c)[~~3.~~] Increase in monitoring requirements -

(i)[~~(a)~~] More frequent monitoring shall be conducted when ordered by the Executive Secretary in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water.

(ii)[~~(b)~~] More frequent monitoring shall be conducted when ordered by the Executive Secretary in the event of possible contamination or when changes in a distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.

(iii)[~~(c)~~] Suppliers of water shall conduct annual monitoring of any community water system in which the radium-226 concentration exceeds 3 pCi/1, when ordered by the Executive Secretary.

(d)[~~4.~~] Substitution of gross alpha particle activity measurement for radium-226 and radium-228 -

(i)[~~(a)~~] Gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis provided that the measured gross alpha particle activity does not exceed 5 pCi/1 at a confidence level of 95 percent (1.65 S where S is the standard deviation of the net counting rate of the sample). In localities where radium-228 may be present in drinking water, radium-226 and/or radium-228 analyses must be conducted when the gross alpha particle activity exceeds 2 pCi/1.

(ii)[~~(b)~~] When the gross alpha particle activity exceeds 5 pCi/1, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds 3 pCi/1 the same or an equivalent sample shall be analyzed for radium-228.

(2)[~~b.~~] Monitoring requirements for man-made radioactivity in community water systems.

(a)[~~1.~~] Monitoring frequency for community and non-community water systems -

(i)[~~(a)~~] Community water systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the Executive Secretary shall be monitored for compliance by analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples.

(ii)[~~(b)~~] After the initial analysis required by Paragraph (i)[~~a.~~] (above) community water systems shall monitor at least every four years following the procedure given in Paragraph (i).[~~a.~~]

(iii)[~~(c)~~] Suppliers of water for non-community systems need not monitor unless specifically directed by the Executive Secretary.

(iv)[~~(d)~~] At the discretion of the Executive Secretary, based on a known hazard taking into account the degree of hazard and the time of travel of the contaminant, suppliers of water utilizing only ground water may be required to monitor for man-made radioactivity.

(v)[~~(e)~~] At any time, based on a known hazard taking into account the degree of hazard and the time of travel of the contaminant, suppliers of water may be required to conduct special additional monitoring, to determine the concentration of manmade radioactivity in principle watersheds designated by the Executive Secretary.

(b)[~~2.~~] Determination of compliance -

(i)[~~(a)~~] Compliance may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/1 and if the average annual concentrations of tritium and strontium-90 are less than those listed in R309-200-5(4), Table 200-4 [~~on Table 103-4~~] provided that if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year.

(ii)[~~(b)~~] If the gross beta particle activity exceeds 50 pCi/1, an analysis of the sample must be performed to identify the major radioactivity constituents present and the appropriate organ and total body doses shall be calculated to determine compliance.

(c)[~~3.~~] Systems contaminated by effluents from nuclear facilities -

(i)[~~(a)~~] The supplier of any community water system designated by the Executive Secretary as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

(ii)[~~(b)~~] Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or a composite of three monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds 15 pCi/1, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds 50 pCi/1, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance.

(iii)[~~(c)~~] For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the Executive Secretary, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(iv)[~~(d)~~] Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(v)[~~(e)~~] The Executive Secretary may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity by the supplier of water where the Executive Secretary determines such data is applicable to a particular water system.

(3)[~~4.4.2~~] Procedures if a Radionuclide MCL is Exceeded

(a)[~~a.~~] Gross alpha and total radium

If the average annual maximum contaminant level for gross alpha particle activity or total radium is exceeded, the supplier of a community water system shall give notice as required by R309-220[~~R309-104-7~~]. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(b)[~~b.~~] Man-made radioactivity

If the average annual maximum contaminant level for man-made radioactivity set forth in R309-200-5(4)[~~R309-103-2.4~~] is exceeded, the operator of a community water system shall give notice as required by R309-309-220[~~R309-104-7~~]. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(c)[~~c.~~] An appropriate treatment process as approved by the Executive Secretary may be required.

R309-205-8. Turbidity.

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(1)[~~4.5.3~~] Routine Monitoring Requirements for Public Water Systems utilizing Ground Water Sources

The frequency of required turbidity monitoring or the lack of any required monitoring listed below may be increased or changed by the Executive Secretary. Monitoring and reporting of water characteristics such as turbidity, conductivity, pH, and temperature of ground water sources and nearby surface water sources may be required so as to provide sufficient information on water characteristics so that the Executive Secretary may classify existing ground water sources as required by R309-505-7(1)(a)(i)(A)[~~R309-106-3(1)(c)~~].

(a)[~~a.~~] All community water systems shall monitor ground water sources for turbidity once every three years.

(b)[~~b.~~] Non-transient non-community water systems are not required to monitor ground water sources for turbidity unless so ordered by the Executive Secretary.

(c)[~~c.~~] Transient non-community [~~Non-community~~] water systems are not required to monitor ground water sources for turbidity unless so ordered by the Executive Secretary.

(d)[~~d.~~] Samples may be taken from a representative location in the distribution system. However, the Executive Secretary may require that samples be collected from each individual source.

(2)[~~4.5.4~~] Procedures if Ground Water Source Turbidity Limit is Exceeded

If the result of an analysis of water from a ground water source or combination of ground water sources indicates that the turbidity limit of 5 NTUs is exceeded, the system shall collect three additional analyses at the same sampling point within one month. When the average of these four analyses (rounded to the same number of significant figures as the limit) exceeds the maximum turbidity limit, the system shall give public notice as required in R309-220[~~R309-104-7.1.a~~]. Where the raw water turbidity of developed spring or well water is in excess of 5 NTU, as measured by the average of the four samples, the spring or well is subject to re-classification by the Executive Secretary and it may be necessary that the raw water receive complete treatment as described in R309-525 or R309-530[~~R309-108~~] of these rules or its equivalent as approved by the Executive Secretary. Monitoring after public notification shall be at a frequency and duration designated by the Executive Secretary.

(3) Turbidity monitoring requirements for surface water and ground water sources under the direct influence of surface water are specified in R309-215-8(3).

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KEY: drinking water, source monitoring, compliance determinations[~~environmental protection, administrative procedure~~]
[~~January 15, 1999~~]August 12, 2002
Notice of Continuation April 16, 2001
19-4-104
63-46b-4

Environmental Quality, Drinking Water
R309-110
Administration: Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24987
FILED: 06/14/2002, 15:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is to update and correct rule references to adhere to a reorganization of the Division's rules (R309) to maintain a more consistent referencing standard.

SUMMARY OF THE RULE OR CHANGE: The rule is being changed to add a definition of "lead free" for lead and copper monitoring waivers and to correct references resulting from other rule changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ LOCAL GOVERNMENTS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.
❖ OTHER PERSONS: No impact--This rule change does not add any additional requirements because it is just reorganizing and clarifying.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change does not add any additional requirements. There should be no additional compliance costs due to this rule change because it is just reorganizing and clarifying.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Patti Fauver or Ken Bousfield at the above address, by phone at 801-536-4196 or 801-536-4207, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at pfauver@deq.state.ut.us or kbousfie@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-110. Administration: Definitions.

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R309-110-3. Definitions.
As used in R309:

. . . . . .

"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.[~~a reverse flow condition, created by a difference in water pressures, which causes water to flow back into the distribution pipes of a potable water supply from any source or sources other than an intended 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.[~~caused by a negative or below atmospheric pressure within a water system.~~] Also see backflow and cross-connection.

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"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.[~~an unapproved water supply or other source of contamination.~~] 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[~~Subcommittee~~]" 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.[~~The Subcommittee will review the qualifications of applicants and make recommendations to the Board for certification of those individuals.~~]

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" Geometric Mean" the geometric mean of a set of N numbers $X_1, X_2, X_3, \ldots, X_N$ 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.

. . . . . .

"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[~~R309-103-2.3.a(19) to (33), R309-103-2.3.b(19) to (21), and R309-103-2.1.c(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.

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"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)[~~R309-113-13(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[~~R309-104-4.2~~] 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 manufacture 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)[~~R309-104-4.6.1~~].

"Major Bacteriological Repeat Monitoring Violation" - means that no repeat bacteriological sample was taken as required by R309-210-5(2)[~~R309-104-4.6.2~~].

"Major Chemical Monitoring Violation" - means that no initial background chemical sample was taken as required in R309-204-4(5)[~~R309-106-3(1)(b)~~].

. . . . . .

"Medium-size water system" for the purposes of R309-210-6[~~R309-104-4.2~~] only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

. . . . . .

"Minor Bacteriological Routine Monitoring Violation" means that not all of the routine bacteriological samples were taken as required by R309-210-5(1)[~~R309-104-4.6.1~~].

"Minor Bacteriological Repeat Monitoring Violation" means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2)[~~R309-104-4.6.2~~].

"Minor Chemical Monitoring Violation" means that the required chemical sample(s) was not taken in accordance with R309-205 and R309-210[~~R309-104-4~~].

. . . . . .

"Optimal corrosion control treatment" for the purposes of R309-210-6[~~R309-104-4.2~~] 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.

. . . . . .

"Routine Chemical Monitoring Violation" means no routine chemical sample(s) was taken as required in R309-205, R309-210 and R309-215[~~R309-104-4~~].

. . . . . .

"Service line sample" means a one-liter sample of water collected in accordance with R309-210-6(3)(b)(iii)[~~R309-104-4.2.3.b.3~~], that has been standing for at least 6 hours in a service line.

"Single family structure" for the purposes of R309-210-6[~~R309-104-4.2~~] only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

. . . . . .

"Unrestricted Certificate" means that a certificate of competency [~~has been issued by the Board on the recommendation of the Commission. This certificate implies that~~]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[~~his~~] certificate.

. . . . . .

KEY: drinking water, definitions
August [~~15, 2000~~] 12, 2002
19-4-104
63-46b-4

Environmental Quality, Drinking Water
R309-210
Monitoring and Water Quality: Distribution System Monitoring Requirements

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24983
FILED: 06/14/2002, 15:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule is to address the federal lead and copper monitoring revisions. Additional changes adhere to a reorganization of the Division's rules (R309) containing a more logical separation of water system requirements and to maintain a more consistent referencing standard within the Division's rules.

SUMMARY OF THE RULE OR CHANGE: The proposed rule contains the part of the existing Rule R309-104 that details the water system's monitoring requirements within the distribution system. It also contains revisions to the lead and copper monitoring requirements consistent with the federal rule which will allow the Division to offer a monitoring waiver to "lead free" water systems. In addition, the rule clarifies the timing and applicability of monitoring and corrosion control milestones in the previous rule language. (DAR NOTE: The proposed amendments to Rule R309-104 are under DAR No. 24984 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This new rule does not add any additional requirements, it clarifies existing rule language with regard to ownership of lead service lines (water system or customer) and monitoring after a lead and copper action level violation. The clarification in the summary of the rule change above does not add any substantive cost or savings-related activities.
❖ LOCAL GOVERNMENTS: No impact--This new rule does not add any additional requirements. In very rare circumstances, it may allow a water system to reduce monitoring from every three years to every nine years, thus resulting in a slight cost savings.
❖ OTHER PERSONS: No impact--This new rule does not add any additional requirements. In the event of a monitoring

reduction, the savings would be small enough to not effectively be passed on to consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule does not add any additional requirements. There should be no additional compliance costs due to this new rule. In very rare circumstances, it may allow a water system to reduce monitoring from every three years to every nine years, thus resulting in a slight cost savings. However, in the event of a monitoring reduction the savings would be small enough to not effectively be passed on to consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Patti Fauver or Ken Bousfield at the above address, by phone at 801-536-4196 or 801-536-4207, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at pfauver@deq.state.ut.us or kbousfie@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements.
R309-210-1. Purpose.

The purpose of this rule is to outline the monitoring requirements for public water systems with regard to their distribution systems.

R309-210-2. Authority.
R309-210-3. Definitions.
R309-210-4. General distribution system monitoring requirements.
R309-210-5. Microbiological Monitoring.
R309-210-6. Lead and Copper Monitoring.
R309-210-7. Asbestos Distribution System Monitoring.
R309-210-8. Disinfection Byproducts Monitoring.

R309-210-2. 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 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-210-3. Definitions.

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

R309-210-4. General.

(1) All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-200. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

(3) If the water fails to meet minimum standards, then certain public notification procedures must be carried out, as outlined in R309-220. Water suppliers must also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

(4) All samples shall be taken at representative sites as specified herein for each contaminant or group of contaminants.

(5) For the purpose of determining compliance, samples may only be considered if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory.

(6) Measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible operator, be performed by any water supplier or their representative.

(7) All samples must be marked either: routine, repeat, check or investigative before submission of such samples to a certified laboratory. Routine, repeat, and check samples shall be considered compliance purpose samples.

(8) All sample results can be sent to the Division of Drinking Water either electronically or in hard copy form.

(9) Lead and Copper data must be submitted to the Division of Drinking Water using forms provided by the Division.

(10) Unless otherwise required by the Board, the effective dates on which required monitoring shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001 by the Office of the Federal Register.

(11) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

R309-210-5. Microbiological Monitoring.

(1) Routine Microbiological Monitoring Requirements Applicable to all public water systems (community, non-transient non-community and transient non-community).

(a) Community water systems shall monitor for total coliforms at a frequency based on the population served, as follows:

TABLE 210-1
TOTAL COLIFORM MONITORING FREQUENCY
FOR PUBLIC WATER SYSTEMS

Population served	Minimum number of samples per month
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

The 25 - 1,000 population figure includes public water systems which have at least 15 service connections, but serve fewer than 25 persons.

(b) Non-transient non-community water systems shall monitor for total coliforms as follows:

(i) A system using only ground water (except ground water under the direct influence of surface water) and serving 1,000 or fewer shall monitor each calendar quarter that the system provides water to the public.

(ii) A system using only ground water (except ground water under the direct influence of surface water) and serving more than 1,000 persons during any month shall monitor at the same frequency as a like-sized community water system, as specified in Table 210-1. The Executive Secretary may reduce the monitoring frequency for any month the system serves 1,000 persons or fewer. In no case may the required monitoring be reduced to less than once per calendar quarter.

(iii) A system using surface water, in total or in part, shall monitor at the same frequency as a like-sized community water system, as specified in Table 210-1.

(iv) A system using ground water under the direct influence of surface water shall monitor at the same frequency as a like-sized community water system, as specified in Table 210-1. The system shall begin monitoring at this frequency beginning six months after the Executive Secretary determines that the ground water is under the direct influence of surface water.

(c) Non-community water systems shall monitor for total coliforms as specified in R309-210-5(1)(b).

(d) The samples shall be collected at points which are representative of water throughout the distribution system according to a written sampling plan. This plan is subject to the approval of the Executive Secretary.

(e) A public water system shall collect samples at regular time intervals throughout the month, except that a system which uses only ground water (except ground water under the direct influence of surface water) and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

(f) A public water system that uses inadequately treated surface water or inadequately treated ground water under the direct influence of surface water shall collect and analyze for total coliforms at least one sample each day the turbidity level of the source water exceeds 1 NTU. This sample shall be collected near the first service connection from the source. The system shall collect the sample within 24 hours of the time when the turbidity level was first exceeded. The sample shall be analyzed within 30 hours of collection. Sample results from this coliform monitoring shall be included in determining total coliform compliance for that month. The Executive Secretary may extend the 24 hour limitation if the system has a logistical problem that is beyond the system's control. In the case of an extension the Executive Secretary shall specify how much time the system has to collect the sample.

(2) Procedures if a Routine Sample is Total Coliform-Positive

(a) Repeat sampling -

The water system shall collect a set of repeat samples within 24 hours of being notified of the total coliform-positive sample result. The number of repeat samples required to be taken is specified in Table 210-2. The Executive Secretary may extend the 24 hour limitation if the system has a logistical problem that is beyond its control. In the case of an extension the Executive Secretary shall specify how much time the system has to collect the repeat samples.

TABLE 210-2
REPEAT AND ADDITIONAL SAMPLE MONITORING FREQUENCY

Population Served by the system	# Routine Samples per month	# Repeats for each Total-Coliform Positive sample Within 24 hours	# Samples in ADDITION to the Routine samples the following month
25-1000/See Note 1 below	1	4	4
1000-2500	2	3	3
2501-3300	3	3	2
3301-4100	4	3	1
greater than 4100	5 or more	3	No additional samples required. Refer to Table 210-1 for # of Routine samples

NOTE 1: The population category 25 - 1000 includes all non-transient non-community and non-community water systems. Non-transient non-community and non-community systems are only are required to sample once per calendar quarter on a routine basis for those quarters the system is in operation.

Repeat and Additional Routine samples are only required if a Routine Sample is Total Coliform-Positive.

(b) Repeat sampling locations -

The system shall collect the repeat samples from the following locations:

(i) One from the original sample site;

(ii) One within 5 service connections upstream;

(iii) One within 5 service connections downstream;

(iv) If required, one from any site mentioned above.

If a total coliform-positive sample is at the end of the distribution system, or next to the end of the distribution system, the Executive Secretary may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

(c) The system shall collect all repeat samples on the same day, except that the Executive Secretary may allow a system with a single service connection to collect the required set of repeat samples on consecutive days.

(d) Additional repeat samples - If one or more repeat samples in a set is total coliform-positive, the system shall collect an additional set of repeat samples as specified in (a), (b) and (c) of this subsection. The additional repeat samples shall be collected within 24 hours of being notified of the positive result, unless the Executive Secretary extends the time limit because of a logistical problem. The system shall repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the total coliform MCL has been exceeded and notifies the Executive Secretary and begins the required public notification.

(e) If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the Executive Secretary does not invalidate the sample under R309-210-5(4), it shall collect at least five routine samples during the next month the system provides water to the public. Refer to Table 210-2 for the number of additional samples required.

(i) The Executive Secretary may waive the requirement to collect five routine samples the next month the system provides water to the public if the Executive Secretary has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case:

(A) The Executive Secretary shall document this decision in writing; and

(B) The Executive Secretary or his representative shall sign the document; and

(C) The Executive Secretary will make the document available to the EPA and the public.

(ii) The Executive Secretary cannot waive the additional samples in the following month solely because all repeat samples are total coliform-negative.

(iii) If the additional samples in the following month are waived, a system shall still take the minimum number of routine samples required in Table 210-1 of R309-210-5(1) before the end of the next month and use it to determine compliance with the total coliform MCL.

(f) Samples to be included in calculations - Results of all routine and repeat samples not invalidated in writing by the Executive Secretary shall be included in determining compliance with the total coliform MCL.

(g) Samples not to be included in calculations - Special purpose and investigative samples, such as those taken to determine the efficiency of disinfection practices following such operations as pipe replacement or repair, may not be used to determine compliance with the MCL for total coliforms. These samples shall be identified as special purpose or investigative at the time of collection.

(3) Response to violation

(a) A public water system which has exceeded the MCL for total coliforms as specified in R309-200-5(6) shall report the violation to the Executive Secretary no later than the end of the next business day after it learns of the violation, and notify the public in accordance with R309-220.

(b) A public water system which has failed to comply with a coliform monitoring requirement shall report the monitoring violation to the Executive Secretary within ten days after the system discovers the violation and notify the public in accordance with R309-220.

(4) Invalidation of Total Coliform-Positive Samples

An invalidated total coliform-positive sample does not count towards meeting the minimum monitoring requirements of R309-210-5(1) and R309-210-5(2). A total coliform-positive sample may not be invalidated solely on the basis of all repeat samples being total coliform-negative.

(a) The Executive Secretary may invalidate a total coliform-positive sample only if one of the following conditions are met:

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result; or

(ii) On the basis of the results of repeat samples collected as required in R309-210-5(2), the total coliform-positive sample resulted from a non-distribution system plumbing problem on the basis that all repeat samples taken at the same tap as the original total coliform-positive are total coliform-positive, but all repeat samples within five service connections are total coliform-negative; or

(iii) Substantial grounds exist to establish that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case:

(A) The Executive Secretary shall document this decision in writing; and

(B) The Executive Secretary or his representative shall sign the document; and

(C) The Executive Secretary will make the document available to the EPA and the public. The system shall still collect the required repeat samples as outlined in R309-210-5(2) in order to determine compliance with the MCL.

(b) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the results are indeterminate because of possible interference. A system shall collect and have analyzed, another total coliform sample from the same location as the original sample within 24 hours of being notified of the indeterminate result. The system shall continue to resample within 24 hours of notification of indeterminate results and have the samples analyzed until a valid sample result is obtained. The 24-hour time limit may be waived by the Executive Secretary on a case-by-case basis if the system has logistical problems beyond its control. Interference for each type of analysis is listed below.

(i) The sample produces a turbid culture in the absence of gas production when using an analytical method where gas formation is examined.

(ii) The sample produces a turbid culture in the absence of an acid reaction when using the Presence-Absence Coliform Test.

(iii) The sample exhibits confluent growth or produces colonies too numerous to count when using an analytical method using a membrane filter.

(5) Fecal coliforms/Escherichia coli (E. coli) testing

(a) If any routine sample, repeat sample or additional sample is total coliform-positive, the system shall have the total coliform-

positive culture medium analyzed to determine if fecal coliforms are present. The system may test for E. coli in lieu of fecal coliforms.

(b) Notification of State and public - If fecal coliforms or E. coli are confirmed present (as per R309-200-5(6)(b)), the system shall notify the Executive Secretary by the end of the day when the system is notified of the test results. If the system is notified after the Division of Drinking Water has closed, the system shall notify the Executive Secretary before the close of the next business day and begin public notification using the mandatory health effects language R309-220) within 72 hours.

(c) The Executive Secretary may allow a system to forego the analysis for fecal coliforms or E. coli, if the system assumes that the total coliform positive sample is fecal coliform-positive or E. coli-positive. The system must notify the Executive Secretary of this decision and begin the required public notification.

(6) Best Available Technology

The Executive Secretary may require an appropriate treatment process using the best available technology (BAT) in order to bring the water into compliance with the maximum contaminant level for microbiological quality. The BAT will be determined by the Executive Secretary.

R309-210-6. Lead and Copper Monitoring.

(1) General requirements.

(a) Applicability and effective dates

(i) The requirements of R309-210-6. unless otherwise indicated, apply to community water systems and non-transient non-community water systems (hereinafter referred to as water systems or systems).

(ii) The requirements in R309-210-6(2), R309-210-6(4), and R309-210-6(7) shall take effect December 7, 1992.

(b) R309-210-6 establishes a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

(c) Corrosion control treatment requirements

(i) All water systems shall install and operate optimal corrosion control treatment. However, any water system that complies with the applicable corrosion control treatment requirements specified by the Executive Secretary under R309-210-6(2) and R309-210-6(4)(a) shall be deemed in compliance with this treatment requirement.

(d) Source water treatment requirements

Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the Executive Secretary under R309-210-6(4)(b).

(e) Lead service line replacement requirements

Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in R309-210-6(4)(c).

(f) Public education requirements

Any system exceeding the lead action level shall implement the public education requirements contained in R309-210-6(7).

(g) Monitoring and analytical requirements

Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results shall be completed in compliance with R309-210-6(3), R309-210-6(5), R309-210-6(6) and R309-200-8.

(h) Reporting requirements

Systems shall report to the Executive Secretary any information required by the treatment provisions of this subpart and R309-210-6(8).

(i) Recordkeeping requirements

Systems shall maintain records in accordance with R309-105-17(2).

(j) Violation of primary drinking water rules

Failure to comply with the applicable requirements of R309-210-6., including requirements established by the Executive Secretary pursuant to these provisions, shall constitute a violation of the primary drinking water regulations for lead and/or copper.

(2) Applicability of corrosion control treatment steps to small, medium-size and large water systems.

(a) Systems shall complete the applicable corrosion control treatment requirements described in R309-210-6(4)(a) by the deadlines established in this section.

(i) A large system (serving greater than 50,000 persons) shall complete the corrosion control treatment steps specified in R309-210-6(2)(d), unless it is deemed to have optimized corrosion control under R309-210-6(2)(b)(ii) or (b)(iii).

(ii) A small system (serving less than 3300 persons) and a medium-size system (serving greater than 3,300 and less than 50,000 persons) shall complete the corrosion control treatment steps specified in R309-210-6(2)(e), unless it is deemed to have optimized corrosion control under R309-210-6(2)(b)(i), (b)(ii), or (b)(iii).

(b) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the criteria in paragraphs (b)(i) through (b)(iii) of this section. Any such system deemed to have optimized corrosion control under this paragraph, and which has treatment in place, shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the Executive Secretary determines appropriate to ensure optimal corrosion control treatment is maintained.

(i) A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with R309-210-6(3).

(ii) Any water system may be deemed by the Executive Secretary to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the Executive Secretary that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the Executive Secretary makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with R309-210-6(4)(a)(vi). Water systems deemed to have optimized corrosion control under this paragraph shall operate in compliance with the State-designated optimal water quality control parameters in accordance with R309-210-6(4)(a)(vii) and continue to conduct lead and copper tap and water quality parameter sampling in accordance with R309-210-6(3)(d)(iii) and R309-210-6(5)(d), respectively. A system shall provide the Executive Secretary with the following information in order to support a determination under this paragraph:

(A) the results of all test samples collected for each of the water quality parameters in R309-210-6(4)(a)(iii)(C).

(B) a report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in R309-

210-6(4)(a)(iii)(A), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(C) a report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(D) the results of tap water samples collected in accordance with R309-210-6(3) at least once every six months for one year after corrosion control has been installed.

(iii) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with R309-210-6(3) and source water monitoring conducted in accordance with R309-210-6(6) that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under R309-200-5(2)(c), and the highest source water lead concentration, is less than the Practical Quantitation Level (PQL) for lead as specified in R309-104-8.

(A) Those systems whose highest source water lead level is below the Method Detection Limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the Practical Quantitation Level for lead for two consecutive 6-month monitoring periods.

(B) Any water system deemed to have optimized corrosion control in accordance with this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three calendar years using the reduced number of sites specified in R309-210-6(3)(c) and collecting the samples at times and locations specified in R309-210-6(3)(d)(iv)(D). Any such system that has not conducted a round of monitoring pursuant to R309-210-6(3)(d) since September 30, 1997, shall complete a round of monitoring pursuant to this paragraph no later than September 30, 2000.

(C) Any water system deemed to have optimized corrosion control pursuant to this paragraph shall notify the Executive Secretary in writing pursuant to R309-210-6(8)(a)(iii) of any change in treatment or the addition of a new source. The Executive Secretary may require any such system to conduct additional monitoring or to take other action the Executive Secretary deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system.

(D) As of July 12, 2001, a system is not deemed to have optimized corrosion control under this paragraph, and shall implement corrosion control treatment pursuant to paragraph (b)(iii)(E) of this section unless it meets the copper action level.

(E) Any system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in paragraph (e) of this section. Any such large system shall adhere to the schedule specified in that paragraph for medium-size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control under this paragraph.

(c) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to R309-210-6(3) and submits the results to the Executive Secretary. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the Executive Secretary, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The Executive Secretary may require a system to repeat treatment steps previously completed by the system where the Executive Secretary determines that this is necessary to implement properly the treatment requirements of this section. The Executive Secretary shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium size system to implement corrosion control treatment steps in accordance with paragraph (e) of this section (including systems deemed to have optimized corrosion control under paragraph (b)(i) of this section) is triggered whenever any small or medium size system exceeds the lead or copper action level.

(d) Treatment steps and deadlines for large systems

Except as provided in R309-210-6(2)(b)(ii) and (b)(iii), large systems shall complete the following corrosion control treatment steps by the indicated dates.

(i) Step 1: The system shall conduct initial monitoring (R309-210-6(3)(d)(i) and R309-210-6(5)(b)) during two consecutive six-month monitoring periods by January 1, 1993.

(ii) Step 2: The system shall complete corrosion control studies (R309-210-6(4)(a)(iii)) by July 1, 1994.

(iii) Step 3: The Executive Secretary shall designate optimal corrosion control treatment (R309-210-6(4)(a)(iv)) by January 1, 1995.

(iv) Step 4: The system shall install optimal corrosion control treatment (R309-210-6(4)(a)(v)) by January 1, 1997.

(v) Step 5: The system shall complete follow-up sampling (R309-210-6(3)(d)(ii) and R309-210-6(5)(c)) by January 1, 1998.

(vi) Step 6: The Executive Secretary shall review installation of treatment and designate optimal water quality control parameters (R309-210-6(4)(a)(vi)) by July 1, 1998.

(vii) Step 7: The system shall operate in compliance with the State-specified optimal water quality control parameters (R309-210-6(4)(a)(vii)) and continue to conduct tap sampling (R309-210-6(3)(d)(iii) and R309-210-6(5)(d)).

(e) Treatment steps and deadlines for small and medium-size systems

Except as provided in R309-210-6(2)(b), small and medium-size systems shall complete the following corrosion control treatment steps by the indicated time periods.

(i) Step 1: The system shall conduct initial tap sampling (R309-210-6(3)(d)(i) and R309-210-6(5)(b) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under R309-210-6(3)(d)(iv). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (R309-210-6(4)(a)(i)) within six months after it exceeds one of the action levels.

(ii) Step 2: Within 12 months after a system exceeds the lead or copper action level, the Executive Secretary may require the system to perform corrosion control studies (R309-210-6(4)(a)(ii)). If the Executive Secretary does not require the system to perform such studies, the Executive Secretary shall specify optimal corrosion control treatment (R309-210-6(4)(a)(iv)) within the following time-frames:

(A) for medium-size systems, within 18 months after such system exceeds the lead or copper action level,

(B) for small systems, within 24 months after such system exceeds the lead or copper action level.

(iii) Step 3: If the Executive Secretary requires a system to perform corrosion control studies under step 2, the system shall

complete the studies (R309-210-6(4)(a)(iii)) within 18 months after the Executive Secretary requires that such studies be conducted.

(iv) Step 4: If the system has performed corrosion control studies under step 2, the Executive Secretary shall designate optimal corrosion control treatment (R309-210-6(4)(a)(iv)) within 6 months after completion of step 3.

(v) Step 5: The system shall install optimal corrosion control treatment (R309-210-6(4)(a)(v)) within 24 months after the Executive Secretary designates such treatment.

(vi) Step 6: The system shall complete follow-up sampling (R309-210-6(3)(d)(ii) and R309-210-6(5)(c)) within 36 months after the Executive Secretary designates optimal corrosion control treatment.

(vii) Step 7: The Executive Secretary shall review the system's installation of treatment and designate optimal water quality control parameters (R309-210-6(4)(a)(vi)) within 6 months after completion of step 6.

(viii) Step 8: The system shall operate in compliance with the Executive Secretary-designated optimal water quality control parameters (R309-210-6(4)(a)(vii)) and continue to conduct tap sampling (R309-210-6(3)(d)(iii) and R309-210-6(5)(d)).

(3) Monitoring requirements for lead and copper in tap water.

(a) Sample site location

(i) By the applicable date for commencement of monitoring under R309-210-6(3)(d)(i), each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in R309-210-6(3)(c). All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(ii) A water system shall use the information on lead, copper, and galvanized steel when conducting a materials evaluation. When an evaluation of this information is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in R309-210-6(3)(a), the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(A) all plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(B) all inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(C) all existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(iii) The sampling sites selected for a community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that:

(A) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(B) are served by a lead service line.

When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(iv) Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(A) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(B) are served by a lead service line.

(v) Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983. A community water system with insufficient tier 1, tier 2 and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(vi) The sampling sites selected for a non-transient non-community water system ("tier 1 sampling sites") shall consist of buildings that:

(A) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(B) are served by a lead service line.

(vii) A non-transient non-community water system with insufficient tier 1 sites that meet the targeting criteria in R309-210-6(3)(a)(vi) shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete its sampling pool, the non-transient non-community water system shall use representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(viii) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall collect first draw samples from all of the sites identified as being served by such lines.

(b) Sample collection methods

(i) All tap samples for lead and copper collected in accordance with this section, with the exception of lead service line samples collected under R309-210-6(4)(c)(iii) and samples collected under (b)(v) of this section, shall be first draw samples.

(ii) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. Non-first-draw samples collected in lieu of first-draw samples pursuant to paragraph (b)(v) of this section shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect

first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems with residents handling nitric acid, acidification of first draw samples may be done up to fourteen days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in R309-200-4(3). If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(iii) Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(A) at the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(B) tapping directly into the lead service line; or

(C) if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(iv) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(v) A non-transient non-community water system, or a community water system that meets the criteria for R309-210-6(7)(c)(vii)(A) and (B), that does not have enough taps that can supply first draw samples, as defined in R309-110, may apply to the Executive Secretary in writing to substitute non-first-draw samples. Such systems must collect as many first draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. The Executive Secretary herein waives the requirement for prior State approval of non-first draw samples sites selected by the system.

(c) Number of samples

Water systems shall collect at least one sample during each monitoring period specified in R309-210-6(3)(d) from the number of sites listed in the first column (standard monitoring) in Table 210-3. A system conducting reduced monitoring under R309-210-6(3)(d)(iv) may collect one sample from the number of sites specified in the second column (reduced monitoring) in Table 210-3 during each monitoring period specified in R309-210-6(3)(d)(iv). Such reduced monitoring sites shall be representative of the sites required for standard monitoring. States may specify sampling locations when a system is conducting reduced monitoring.

TABLE 210-3
NUMBER OF LEAD AND COPPER SAMPLING SITES

System Size (# People Served)	# of sites (Standard Monitoring)	# of sites (Reduced Monitoring)
Greater than 100,000	100	50
10,001-100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
100 or less	5	5

(d) Timing of monitoring

(i) Initial tap sampling

The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates in Table 210-4:

TABLE 210-4
INITIAL LEAD AND COPPER MONITORING PERIODS

System Size (# People Served)	First six-month Monitoring Period Begins On
Greater than 50,000	January 1, 1992
3,301 to 50,000	July 1, 1992
3,300 or less	July 1, 1993

(A) All large systems shall monitor during two consecutive six-month periods.

(B) All small and medium-size systems shall monitor during each six-month monitoring period until:

(I) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under R309-210-6(2), in which case the system shall continue monitoring in accordance with R309-210-6(3)(d)(ii), or

(II) the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with R309-210-6(3)(d)(iv).

(ii) Monitoring after installation of corrosion control and source water treatment

(A) Any large system which installs optimal corrosion control treatment pursuant to R309-210-6(2)(d)(iv) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-210-6(2)(d)(v).

(B) Any small or medium-size system which installs optimal corrosion control treatment pursuant to R309-210-6(2)(e)(v) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-210-6(2)(e)(vi).

(C) Any system which installs source water treatment pursuant to R309-210-6(4)(b)(i)(C) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-210-6(4)(b)(i)(D).

(iii) Monitoring after State specifies water quality parameter values for optimal corrosion control

After the Executive Secretary specifies the values for water quality control parameters under R309-210-6(4)(a)(vi), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the Executive Secretary specifies the optimal values under R309-210-6(4)(a)(vi).

(iv) Reduced monitoring

(A) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with R309-210-6(3)(c), Table 210-3, and reduce the frequency of sampling to once per year.

(B) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in

accordance with R309-210-6(3)(c), Table 210-3 if it receives written approval from the Executive Secretary. The Executive Secretary shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with R309-210-6(8), and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring pursuant to this paragraph. The Executive Secretary shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(C) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if it receives written approval from the Executive Secretary The Executive Secretary shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with R309-210-6(8), and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring to once every three years. The Executive Secretary shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(D) A water system that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in R309-210-6(3)(a). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September unless the Executive Secretary has approved a different sampling period in accordance with paragraph (d)(iv)(D)(I) of this section.

(I) The Executive Secretary, at its discretion, may approve a different period for conducting the lead and copper sampling for systems collecting a reduced number of samples. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a non-transient non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the Executive Secretary shall designate a period that represents a time of normal operation for the system.

(II) Systems monitoring annually, that have been collecting samples during the months of June through September and that receive Executive Secretary approval to alter their sample collection period under paragraph (d)(iv)(D)(I) of this section, must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling. Systems monitoring triennially that have been collecting samples during the months of June through September, and receive Executive Secretary approval to alter the sampling collection period as per (d)(iv)(D)(I) of this section, must collect their next round of samples during a time period that ends no later than 45 months after the previous round of sampling. Subsequent rounds of sampling must be collected annually or triennially, as required by this section. Small systems with waivers, granted pursuant to paragraph (g) of this section, that have been collecting samples during the months of June through September and receive Executive Secretary approval to alter their sample collection period under paragraph (d)(iv)(D)(I) of this section must collect their next round of samples before the end of the 9 year period.

(E) Any water system that demonstrates for two consecutive 6 month monitoring periods that the tap water lead level computed under R309-200-5(2)(c) is less than or equal to 0.005 mg/l and the tap water copper level computed under R309-200-5(2)(c) is less than or equal to 0.65 mg/l may reduce the number of samples in accordance paragraph (c) of this section and reduce the frequency of sampling to once every three calendar years.

(F)(I) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance R309-210-6(3)(d)(iii) and collect the number of samples specified for standard monitoring under R309-210-6(3)(c), Table 210-3. Such system shall also conduct water quality parameter monitoring in accordance with R309-210-6(5)(b), (c) or (d) (as appropriate) during the monitoring period in which it exceeded the action level. Any such system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in paragraph (c) of this section after it has completed two subsequent consecutive six month rounds of monitoring that meet the criteria of paragraph (d)(iv)(A) of this section or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(vi)(C) or (d)(iv)(D) of this section.

(II) Any water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Executive Secretary under R309-210-6(4)(a)(vi) for more than 9 days in any six month period specified in R309-210-6(5)(d) shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (d)(iii) of this section, collect the number of samples specified for standard monitoring under paragraph (c) of this section, and shall resume monitoring for water quality parameters within the distribution system in accordance with sec R309-210-6(5)(d). Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(aa) The system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in paragraph (c) of this section after it has completed two subsequent six month rounds of monitoring that meet the criteria of paragraph (d)(iv)(B) of this section and the system has received written approval from the Executive Secretary that it is appropriate to resume reduced monitoring on an annual frequency.

(bb) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(iv)(C) or (d)(iv)(E) of this section and the system has received written approval from the Executive Secretary that it is appropriate to resume triennial monitoring.

(cc) The system may reduce the number of water quality parameter tap water samples required in accordance with R309-210-6(5)(e)(i) and the frequency with which it collects such samples in accordance with R309-210-6(5)(e)(ii). Such a system may not resume triennial monitoring for water quality parameters at the tap

until it demonstrates, in accordance with the requirements of R309-210-6(5)(e)(ii), that it has requalified for triennial monitoring.

(G) Any water system subject to a reduced monitoring frequency under paragraph (d)(iv) of this section that either adds a new source of water or changes any water treatment shall inform the Executive Secretary in writing in accordance with R309-210-6(8)(a)(iii). The Executive Secretary may require the system to resume sampling in accordance with paragraph (d)(iii) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(e) Additional monitoring by systems

The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Executive Secretary in making any determinations (i.e., calculating the 90th percentile lead or copper level).

(f) Invalidation of lead or copper tap water samples. A sample invalidated under this paragraph does not count toward determining lead or copper 90th percentile levels under Sec. 141.80 (c) (3) or toward meeting the minimum monitoring requirements of paragraph (c) of this section.

(i) The Executive Secretary may invalidate a lead or copper tap water sample at least if one of the
following conditions is met.

(A) The laboratory establishes that improper sample analysis caused erroneous results.

(B) The Executive Secretary determines that the sample was taken from a site that did not meet the
site selection criteria of this section.

(C) The sample container was damaged in transit.

(D) There is substantial reason to believe that the sample was subject to tampering.

(ii) The system must report the results of all samples to the Executive Secretary and all supporting
documentation for samples the system believes should be invalidated.

(iii) To invalidate a sample under paragraph (f)(i) of this section, the decision and the
rationale for the decision must be documented in writing. The Executive Secretary may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(iv) The water system must collect replacement samples for any samples invalidated
under this section if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements of paragraph (c) of this section. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the Executive Secretary invalidates the sample or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement samples shall be taken at the same locations other than those already used for sampling during the monitoring period.

(g) Monitoring waivers for small systems. Any small system that meets the criteria of
this paragraph may apply to the Executive Secretary to reduce the frequency of monitoring for lead and copper under this section to once every nine years (i.e., a full waiver) if it meets all of the materials criteria specified in paragraph (g)(i) of this section and all of the monitoring criteria specified in paragraph (g) (ii) of this section. If State regulations permit, any small system that meets the criteria in paragraphs (g) (i) and (ii) of this section only for lead, or only for copper, may apply to the Executive Secretary for a waiver to reduce the frequency of tap water monitoring to once ever nine years for that contaminant only (i.e., a partial waiver).

(i) Materials criteria. The system must demonstrate that its distribution system and
service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials, as those terms are defined in this paragraph, as follows:

(A) Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead (i.e., a lead waiver), the water system must provide certification and supporting documentation to the Executive Secretary that the system is free of all lead-containing materials, as follows:

(I) It contains no plastic pipes which contain lead plasticizers, or plastic service lines
which contain lead plasticizers; and

(II) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded
brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 U.S.C. 300g-6(e) (SDWA section 1417 (e)).

(B) Copper. To qualify for a full waiver, or waiver of the tap water monitoring
requirements for copper (i.e., a copper waiver), the water system must provide certification and supporting documentation to the Executive Secretary that the system contains no copper pipes or copper service lines.

(ii) Monitoring criteria for waiver issuance. The system must have completed at least
one 6-month round of standard tap water monitoring for lead and copper at sites approved by the Executive Secretary and from the number of sites required by paragraph (c) of this section and demonstrate that the 90th percentile levels for any and all rounds of monitoring conducted since the system became free of all lead-containing and/or copper-containing materials, as appropriate, meet the following criteria.

(A) Lead levels. To qualify for a full waiver, or a lead waiver, the system must demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

(B) Copper levels. To qualify for a full waiver, or a copper waiver, the system must demonstrate that the 90th percentile lead level does not exceed 0.65 mg/L.

(iii) State approval of waiver application. The Executive Secretary shall notify the system of its waiver determination, in writing, setting forth the basis of its decision and any condition of the waiver. As a condition of the waiver, the Executive Secretary may require the system to perform specific activities (e.g., limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the waiver) to avoid the risk of lead or copper concentration of concern in tap water. The small system must continue monitoring for lead and copper at the tap as required by paragraphs (d) (i) through (d) (iv) of this section, as appropriate, until it receives written notification from the Executive Secretary the waiver has been approved.

(iv) Monitoring frequency for systems with waivers.

(A) A system with a full waiver must conduct tap water monitoring for lead and copper in accordance with paragraph (d)(iv)(D) of this section at the reduced number of sampling sites identified in paragraph (c) of this section at least once every nine years and provide the materials certification specified in paragraph (g)(i) of this section for both lead and copper to the Executive Secretary along with the monitoring results.

(B) A system with a partial waiver must conduct tap water monitoring for the waived contaminant in accordance with paragraph (d)(iv)(D) of this section at the reduced number of sampling sites specified in paragraph (c) of this section at least once every nine years and provide the materials certification specified in paragraph (g)(i) of this section pertaining to the waived contaminant along with the monitoring results. Such a system also must continue to monitor for the non-waived contaminant in accordance with requirements of paragraph (d)(i) through (d)(iv) of this section, as appropriate.

(C) If a system with a full or partial waiver adds a new source of water or changes any water treatment, the system must notify the Executive Secretary in writing in accordance with R309-210-6(8)(a)(iii). The Executive Secretary has the authority to require the system to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials, require additional round(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the system.

(D) If a system with a full or partial waiver because aware that it is no longer free of lead-containing or copper-containing materials, as appropriate, (e.g., as a result of new construction or repairs), the system shall notify the Executive Secretary in writing no later than 60 days after becoming aware of such a change.

(v) Continued eligibility. If the system continues to satisfy the requirements of paragraph (g) (iv) of this section, the waiver will be renewed automatically, unless any of the conditions listed in paragraph (g)(v)(A) through (g)(v)(C) of this section occurs. A system whose waiver has been revoked may re-apply for a waiver at such time as it again meets the appropriate materials and monitoring criteria of paragraphs (g)(i) and (g)(ii) of this section.

(A) A system with a full waiver or lead waiver no longer satisfies the materials criteria of paragraph (g)(i)(A) of this section or has a 90th percentile lead level greater than 0.005 mg/L.

(B) A system with a full waiver or a copper waiver no longer satisfies the materials criteria of paragraph (g)(i)(B) of this section or has a 90th percentile copper level greater than 0.65 mg/L.

(C) The Executive Secretary notifies the system, in writing, that the waiver has been revoked, setting forth the basis of its decision.

(vi) Requirements following waiver revocation. A system whose full or partial waiver has been revoked by the Executive Secretary is subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

(A) If the system exceeds the lead and/or copper action level, the system must implement corrosion control treatment in accordance with the deadlines specified in R309-210-6(2)(e), and any other applicable requirements of this subpart.

(B) If the system meets both the lead and the copper action level, the system must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in paragraph (c) of this section.

(vii) Pre-existing waivers. Small system waivers approved by the Executive Secretary in writing prior to April 11, 2000 shall remain in effect under the following conditions:

(A) If the system has demonstrated that it is both free of lead-containing and copper- containing materials, as required by paragraph (g)(i) of this section and that its 90th percentile lead levels and 90th percentile copper levels meet the criteria of paragraph (g)(ii) of this section, the waiver remains in effect so long as the system continues to meet the waiver eligibility criteria of paragraph (g)(v) of this section. The first round of tap water monitoring conducted pursuant to paragraph (g)(iv) of this section shall be completed no later than nine years after the last time the system has monitored for lead and copper at the tap.

(B) If the system has met the materials criteria of paragraph (g)(i) of this section but has not met the monitoring criteria of paragraph (g)(ii) of this section, the system shall conduct a round of monitoring for lead and copper at the tap demonstrating that it meets the criteria of paragraph (g)(ii) of this section no later than September 30, 2000. Thereafter, the waiver shall remain in effect as long as the system meets the continued eligibility criteria of paragraph (g)(v) of this section. The first round of tap water monitoring conducted pursuant to paragraph (g)(iv) of this section shall be completed no later than nine years after the round of monitoring conducted pursuant to paragraph (g)(ii) of this section.

(4) Corrosion Control for Control of Lead and Copper

(a) Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under R309-210-6(2).

(i) System recommendation regarding corrosion control treatment

Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in R309-210-6(4)(a)(iii)(A) which the system believes constitutes optimal corrosion control for that system. The Executive Secretary may require the system to conduct additional water quality parameter monitoring in accordance with R309-210-6(5)(b) to assist the Executive Secretary in reviewing the system's recommendation.

(ii) Studies of corrosion control treatment required for small and medium-size systems.

The Executive Secretary may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under R309-210-6(4)(a)(iii) to identify optimal corrosion control treatment for the system.

(iii) Performance of corrosion control studies

(A) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that system:

(I) alkalinity and pH adjustment;

(II) calcium hardness adjustment; and

(III) the addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(B) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented

analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(C) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

(I) lead;

(II) copper;

(III) pH;

(IV) alkalinity;

(V) calcium;

(VI) conductivity;

(VII) orthophosphate (when an inhibitor containing a phosphate compound is used);

(VIII) silicate (when an inhibitor containing a silicate compound is used);

(IX) water temperature.

(D) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(I) data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(II) data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(E) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(F) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the Executive Secretary in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in R309-210-6(4)(a)(iii)(A) through R309-210-6(4)(a)(iii)(E).

(iv) Designation of optimal corrosion control treatment

(A) Based upon consideration of available information including, where applicable, studies performed under R309-210-6(4)(a)(iii) and a system's recommended treatment alternative, the Executive Secretary shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in R309-210-6(4)(a)(iii)(A). When designating optimal treatment the Executive Secretary shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(B) The Executive Secretary shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Executive Secretary requests additional information to aid its review, the water system shall provide the information.

(v) Installation of optimal corrosion control

Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the Executive Secretary under R309-210-6(4)(a)(iv).

(vi) Review of treatment and specification of optimal water quality control parameters

The Executive Secretary shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the Executive Secretary in R309-210-6(4)(a)(iv). Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the Executive Secretary shall designate:

(A) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(B) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the Executive Secretary determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(C) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the Executive Secretary determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(D) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(E) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the Executive Secretary determines to reflect optimal corrosion control treatment for the system. The Executive Secretary may designate values for additional water quality control parameters determined by the Executive Secretary to reflect optimal corrosion control for the system. The Executive Secretary shall notify the system in writing of these determinations and explain the basis for the decisions.

(vii) Continued operation and monitoring. All systems optimizing corrosion control
shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the Executive Secretary under paragraph (vi) of this section, in accordance with this paragraph for all samples collected under R309-210-6(5)(d) through (f). Compliance with the requirements of this paragraph shall be determined every six months, as specified under R309-210-6(5)(d). A water system is out of compliance with the requirements of this paragraph for a six-month period of it has excursions for any State-specified parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the Executive Secretary. Daily values are calculated as follows. The Executive Secretary has discretion to delete results of obvious sampling errors from this calculation.

(A) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or combination of both.

(B) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(C) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

(viii) Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Executive Secretary may modify its determination of the optimal corrosion control treatment under R309-210-6(4)(a)(iv) or optimal water quality control parameters under R309-210-6(4)(a)(vi). A request for modification by a system or other interested party shall: be in writing, explain why the modification is appropriate, and provide supporting documentation. The Executive Secretary may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall: be made in writing, set forth the new treatment requirements, explain the basis for the Executive Secretary's decision, and provide an implementation schedule for completing the treatment modifications.

(b) Source water treatment requirements.

Systems shall complete the applicable source water monitoring and treatment requirements (described in the referenced portions of R309-210-6(4)(b)(ii), and in R309-210-6(3), and R309-210-6(6)) by the following deadlines.

(i) Deadlines for Completing Source Water Treatment Steps

(A) Step 1: A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (R309-210-6(6)(b)) and make a treatment recommendation to the Executive Secretary (R309-210-6(4)(b)(ii)(A)) within 6 months after exceeding the lead or copper action level.

(B) Step 2: The Executive Secretary shall make a determination regarding source water treatment (R309-210-6(4)(b)(ii)(B)) within 6 months after submission of monitoring results under step 1.

(C) Step 3: If the Executive Secretary requires installation of source water treatment, the system shall install the treatment (R309-210-6(4)(b)(ii)(C)) within 24 months after completion of step 2.

(D) Step 4: The system shall complete follow-up tap water monitoring (R309-210-6(3)(d)(ii)) and source water monitoring (R309-210-6(6)(c)) within 36 months after completion of step 2.

(E) Step 5: The Executive Secretary shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels (R309-210-6(4)(b)(ii)(D)) within 6 months after completion of step 4.

(F) Step 6: The system shall operate in compliance with the State-specified maximum permissible lead and copper source water levels (R309-210-6(4)(b)(ii)(D)) and continue source water monitoring (R309-210-6(6)(d)).

(ii) Description of Source Water Treatment Requirements

(A) System treatment recommendation

Any system which exceeds the lead or copper action level shall recommend in writing to the Executive Secretary the installation and operation of one of the source water treatments listed in R309-210-6(4)(b)(ii)(B). A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(B) Determination regarding source water treatment

The Executive Secretary shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the Executive Secretary determines that treatment is needed, the Executive Secretary shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the Executive Secretary requests additional information to aid in its review, the water system shall provide the information by the date specified by the Executive Secretary in its request. The Executive Secretary shall notify the system in writing of its determination and set forth the basis for its decision.

(C) Installation of source water treatment

Each system shall properly install and operate the source water treatment designated by the Executive Secretary under R309-210-6(4)(b)(ii)(B).

(D) Review of source water treatment and specification of maximum permissible source water levels

The Executive Secretary shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the Executive Secretary. Based upon its review, the Executive Secretary shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The Executive Secretary shall notify the system in writing and explain the basis for its decision.

(E) Continued operation and maintenance

Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the Executive Secretary at each sampling point monitored in accordance with R309-210-6(6). The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the Executive Secretary.

(F) Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Executive Secretary may modify its determination of the source water treatment under R309-210-6(4)(b)(ii)(B), or maximum permissible lead and copper concentrations for finished water entering the distribution system under R309-210-6(4)(b)(ii)(D). A request for modification by a system or other interested party shall: be in writing, explain why the modification is appropriate, and provide supporting documentation. The Executive Secretary may modify the determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall: be made in writing, set forth the new treatment requirements, explain the basis for the Executive Secretary's decision, and provide an implementation schedule for completing the treatment modifications.

(c) Lead service line replacement requirements.

(i) Systems that fail to meet the lead action level in tap samples taken pursuant to R309-210-6(3)(d)(ii), after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the

requirements of this section. If a system is in violation of R309-210-6(2) or R309-210-6(4)(b) for failure to install source water or corrosion control treatment, the Executive Secretary may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under R309-104-4.2.3.d.2. has passed.

(ii) A system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system, including an identification of the portion(s) owned by the system, based upon a materials evaluation, including the evaluation required under R309-210-6(3)(a) and relevant legal authorities (e.g., contracts, local ordinances) regarding the portion owned by the system. The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in R309-210-6(4)(c)(i).

(iii) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to R309-210-6(3)(b)(iii), is less than or equal to 0.015 mg/l.

(iv) A water system shall replace that portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the privately-owned portion where the owner chooses not to pay the cost of replacing the privately owned portion of the line, or where replacing the privately-owned portion would be precluded by State, local or common law. A water system that does not replace the entire length of the service line also shall complete the following tasks.

(A) At least 45 days prior to commencing with the partial replacement of a lead service line, the water system shall provide notice to the resident(s) of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The Executive Secretary may allow the water system to provide notice under the previous sentence less than 45 days prior to commencing partial lead service line replacement where such replacement is in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed under R309-210-6(3)(b)(iii), within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices post-marked within three business days of receiving the results shall be considered on time.

(B) The water system shall provide the information required by paragraph (c)(iv)(A) of this section to the residents of individual dwellings by mail or by other methods approved by the Executive Secretary. In instances where multi-family dwellings are served by the line, the water system shall have the option to post the information at a conspicuous location.

(v) The Executive Secretary shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The Executive Secretary shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring referenced in R309-210-6(4)(c)(i).

(vi) Any system may cease replacing lead service lines whenever first draw samples collected pursuant to R309-210-6(3)(b)(ii) meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the Executive Secretary. If first draw tap samples collected in any such water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines, pursuant to R309-210-6(4)(c)(ii).

(vii) To demonstrate compliance with R309-210-6(4)(c)(i) through R309-210-6(4)(c)(iv), a system shall report to the Executive Secretary the information specified in R309-210-6(8)(e).

(5) Monitoring requirements for water quality parameters.

All large water systems and all small and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section.

(a) General Requirements

(i) Sample collection methods

(A) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under R309-210-6(3)(a).

(B) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(ii) Number of samples

(A) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under R309-210-6(5)(b) through R309-210-6(5)(e) from the following number of sites in Table 210-5.

TABLE 210-5
NUMBER OF WATER QUALITY PARAMETER SAMPLE SITES

System Size (# People Served)	# of Sites For Water Quality Parameters
Greater than 100,000	25
10,001-100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
100 or less	1

(B) Except as provided in paragraph (c)(iii) of this section, Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in R309-210-6(5)(b). Systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in R309-210-6(5)(c) through R309-210-6(5)(e).

(b) Initial Sampling

All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in R309-210-6(3)(d)(i). All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in R309-210-6(3)(d)(i) during which the system exceeds the lead or copper action level.

(i) At taps:

(A) pH;

(B) alkalinity;

(C) orthophosphate, when an inhibitor containing a phosphate compound is used;

(D) silica, when an inhibitor containing a silicate compound is used;

(E) calcium;

(F) conductivity; and

(G) water temperature.

(ii) At each entry point to the distribution system: all of the applicable parameters listed in R309-210-6(5)(b)(i).

(c) Monitoring after installation of corrosion control

Any large system which installs optimal corrosion control treatment pursuant to R309-210-6(2)(d)(iv) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in R309-210-6(3)(d)(ii)(A). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in R309-210-6(3)(d)(ii)(B) in which the system exceeds the lead or copper action level.

(i) At taps, two samples for:

(A) pH;

(B) alkalinity;

(C) orthophosphate, when an inhibitor containing a phosphate compound is used;

(D) silica, when an inhibitor containing a silicate compound is used;

(E) calcium, when calcium carbonate stabilization is used as part of corrosion control.

(ii) Except as provided in Paragraph (c)(iii) of this section, at each entry point to the distribution system, at least on sample no less frequently than every two weeks (bi-weekly) for:

(A) pH;

(B) when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(C) when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(iii) Any ground water system can limit entry point sampling described in paragraph (c)(ii) of this section to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the system shall provide to the Executive Secretary written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(d) Monitoring after Executive Secretary specifies water quality parameter values for optimal corrosion control.

After the Executive Secretary specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under R309-210-6(4)(a)(vi), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section and determine compliance with the requirements of R309-210-6(4)(a)(vii) every six months with the first six month period to begin on the date the Executive Secretary specifies the optimal values under R309-210-6(4)(a)(vi). Any small or medium size system shall conduct such monitoring during each six month period specified in this paragrph in which the system exceeds the lead or copper action level. For any such small and medium size system that is subject to a reduced monitoring frequency pursuant to R309-210-6(3)(d)(iv) at the time of the action level exceedance, the end of the applicable six month monitoring period under R309-210-6(3)(d)(iv). Compliance with State designated optimal water quality parameter values shall be determined as specified under R309-210-6(4)(a)(vii).

(e) Reduced monitoring

(i) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under R309-210-6(5)(d) shall continue monitoring at the entry point(s) to the distribution system as specified in R309-210-6(5)(c)(ii). Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites in Table 210-6 during each six-month monitoring period.

TABLE 210-6
REDUCED NUMBER OF WATER QUALITY PARAMETER SAMPLE SITES

System Size (# People Served)	Reduced # of Sites for Water Quality Parameters
Greater than 100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
100 or less	1

(ii)(A) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in R309-210-6(5)(e)(i), Table 210-6, from every six months to annually. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during three consecutive years of annual monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in R309-210-6(5)(e)(i), Table 210-6, from annually to every three years.

(B) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (e)(i) of this section to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the

PQL for lead specified in R309-200-4(3), that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/l for copper in R309-200-5(2)(c), and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under R309-210-6(4)(a)(vi).

(iii) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(iv) Any water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Executive Secretary in R309-210-6(4)(a)(vi) for more than 9 days in any six month period specified in R309-210-6(4)(a)(vii) shall resume distribution system tap water sampling in accordance with the number and frequency requirements in paragraph (d) of this section. Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (e)(i) of this section after it has completed two subsequent consecutive six month rounds of monitoring that meet the criteria of that paragraph or may resume triennial monitoring for water quality parameters at the tap at the reduced number os sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (e)(ii)(A) or (e)(ii)(B) of this section.

(f) Additional monitoring by systems

The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Executive Secretary in making any determinations (i.e., determining concentrations of water quality parameters) under this section or R309-210-6(4)(a).

(g) The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-8.

(6) Monitoring requirements for lead and copper in source water.

(a) Sample location, collection methods, and number of samples

(i) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with R309-210-6(3) shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(A) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). The system shall take one sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(B) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point). The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(C) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(D) The Executive Secretary may reduce the total number of samples which must be analyzed by allowing the use of compositing. Compositing of samples must be dine by certified laboratory personnel. Composite samples from a maximum of five samples are allowed, provided that if the lead concentration in the composite sample is greater than or equal to 0.001 mg/Ll or the copper concentration is greater than or equal to 0.160 mg/L, then either:

(I) A follow up sample shall be taken and analyzed within 14 days at each sampling point included in the composite; or

(II) If duplicates of or sufficient quantities from the original samples from each sampling point used in the composite are available, the system may use these instead of resampling.

(ii) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under R309-210-6(4)(b)(ii)(D), the Executive Secretary may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(b) Monitoring frequency after system exceeds tap water action level.

Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(c) Monitoring frequency after installation of source water treatment.

Any system which installs source water treatment pursuant to R309-210-6(4)(b)(i)(C) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in R309-210-6(4)(b)(i)(D).

(d) Monitoring frequency after Executive Secretary specifies maximum permissible source water levels or determines that source water treatment is not needed

(i) A system shall monitor at the frequency specified below in cases where the Executive Secretary specifies maximum permissible source water levels under R309-210-6(4)(b)(ii)(D) or determines that the system is not required to install source water treatment under R309-210-6(4)(b)(ii)(B).

(A) A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable determination under R309-210-6(6)(d)(i) is made. Such systems shall collect samples once during each subsequent compliance period.

(B) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable determination is made under R309-210-6(6)(d)(i).

(ii) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source

water sampling period applicable to the system under R309-210-6(6)(d)(i)(A) or (B).

(e) Reduced monitoring frequency

(i) A water system using only ground water may reduce the monitoring frequency for lead and copper in source water to once during each nine year compliance cycle, as defined in R309-110, if the system meets one of the following criteria:

(A) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State in R309-210-6(4)(b)(ii)(D) during at least three consecutive compliance periods under paragraph (d)(i) of this section; or

(B) The Executive Secretary has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive compliance periods in which sampling was conducted under paragraph (d)(i) of this section, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(ii) A water system using surface water (or a combination of surface water and ground water) may reduce the monitoring frequency in paragraph (d)(i) of this section to once during each nine year compliance cycle, as defined in R309-110, if the system meets one of the following criteria:

(A) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-210-6(4)(b)(ii)(D) for at least three consecutive years; or

(B) The Executive Secretary has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(iii) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-210-6(4)(b)(i)(E).

(iv) The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-8.

(7) Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with R309-210-6(3) shall deliver the public education materials contained in R309-210-6(7)(a) and (b) in accordance with the requirements in R309-210-6(7)(c).

(a) Content of written materials.

(i) Community water systems. A community water system shall include the following text in all of the printed materials it distributes through its lead public education program. Systems may delete information pertaining to lead service lines, upon approval by the Executive Secretary, if no lead service lines exist anywhere in the water system service area. Public education language at paragraphs (a)(1)(iv)(B)(5) and (a)(1)(iv)(D)(2) of this section may be modified regarding building permit record availability and consumer access to these records, if approved by the Executive Secretary. Systems may also continue to utilize pre-printed materials that meet the public education language requirements in R309-210-6(7). Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

(A) INTRODUCTION

The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/l). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(B) HEALTH EFFECTS OF LEAD

Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination -- like dirt and dust -- that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) LEAD IN DRINKING WATER

(I) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(II) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(III) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(D) STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER

(I) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call (insert phone number of water system).

(II) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(aa) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(bb) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(cc) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(dd) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your local plumbing inspector and the State Department of Commerce about the violation.

(ee) Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the (insert name of department that issues building permits). A licensed plumber can at the same time check to see if your homes's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the portion of the line we own. If the line is only partially owned by the (insert name of the city, county, or water system that owns the line), we are required to provide the owner of the privately-owned portion of the line with information on how to replace the privately-owned portion of the service line, and offer to replace that portion of the line at owner's expense. If we replace only the portion of the line that we own, we also are required to notify you in advance and provide you with information on the steps you can take to minimize exposure to any temporary increase in lead levels that may result from the partial replacement, to take a follow-up sample at our expense from the line within 72 hours after the partial replacement, and to mail or otherwise provide you with the results of that sample within three business days of receiving the results. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

(ff) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(III) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(aa) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(bb) Purchase bottled water for drinking and cooking.

(IV) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(aa) (insert the name of city or county department of public utilities) at (insert phone number) can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(bb) (insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(cc) The State Division of Drinking Water at 536-4200 or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead and how you can have your child's blood tested.

(V) The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. (Insert names and phone numbers of at least two laboratories).

(ii) Non-transient non-community water systems. A non-transient non-community water system shall either include the text specified in R309-210-6 (7)(a)(i) of this section or shall include the following text in all of the printed materials it distributes through its lead public education program. Water systems may delete information pertaining to lead service lines, upon approval by the Executive Secretary, if no lead service lines exist anywhere in the water system service area. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

(A) INTRODUCTION

The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/l). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

(B) HEALTH EFFECTS OF LEAD

Lead is found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination -- like dirt and dust -- that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) LEAD IN DRINKING WATER

(I) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(II) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect houses and buildings to the water mains (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(III) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

(D) STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER

(I) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

(II) Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it.

(III) The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water for drinking and cooking.

(IV) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(aa) (insert the name or title of facility official if appropriate) at (insert phone number) can provide you with information about your facility's water supply, and

(bb) The State Division of Drinking Water at 536-4200 or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead.

(b) Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(i) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for (insert free or $ per sample). You can contact the (insert the name of the city or water system) for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(ii) To have your water tested for lead, or to get more information about this public health concern, please call (insert the phone number of the city or water system).

(c) Delivery of a public education program

(i) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(ii) A community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with R309-210-6(3) and that is not already repeating public education

tasks pursuant to paragraph (c)(iii), (c)(vii), or (c)(viii), of this section, shall, within 60 days:

(A) insert notices in each customer's water utility bill containing the information in R309-210-6(7)(a), along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION." A community water system having a billing cycle that does not include a billing within 60 days of exceeding the action level, or that cannot insert information in the water utility bill without making major changes to its billing system, may use a separate mailing to deliver the information in paragraph (a)(i) of this section as long as the information is delivered to each customer within 60 days of exceeding the action level. Such water systems shall also include the "alert" language specified in this paragraph.

(B) submit the information in R309-210-6(7)(a)(i) to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(C) deliver pamphlets and/or brochures that contain the public education materials in R309-210-6(7)(a)(i)(B) and (a)(i)(D) to facilities and organizations, including the following:

(I) public schools and/or local school boards;

(II) city or county health department;

(III) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(IV) public and private hospitals and/or clinics;

(V) pediatricians;

(VI) family planning clinics; and

(VII) local welfare agencies.

(D) submit the public service announcement in R309-104-4.2.7.b. to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(iii) A community water system shall repeat the tasks contained in Subsections R309-210-6(7)(c)(ii)(A), (B) and (C) every 12 months, and the tasks contained in Subsection R309-210-6(7)(c)(ii)(D) every 6 months for as long as the system exceeds the lead action level.

(iv) Within 60 days after it exceeds the lead action level (unless it already is repeating public education tasks pursuant to paragraph (c)(v) of this section), a non-transient non-community water system shall deliver the public education materials contained in R309-210-6(7)(a)(i) or R309-210-6(7)(a)(ii) as follows:

(A) post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(B) distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system. The Executive Secretary may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(v) A non-transient non-community water system shall repeat the tasks contained in R309-210-6(7)(c)(iv) at least once during each calendar year in which the system exceeds the lead action level.

(vi) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to R309-210-6(3). Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(vii) A community water system may apply to the Executive Secretary, in writing, (unless the State has waived the requirement for prior State approval) to use the text specified in paragraph (a)(ii) of this section in lieu of the text in paragraph (a)(i) of this section and to perform the fasks listed in paragraphs (c)(iv) and (c)(v) of this section in lieu of the tasks in paragraphs (c)(ii) and (c)(iii) of this section if:

(A) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(B) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(viii)(A) A community water system serving 3,300 or fewer people may omit the task contained in paragraph (c)(ii)(D) of this section. As long as it distributes notices containing the information contained in paragraph (a)(i) of this section to every household served by the system, such systems may further limit their public education programs as follows:

(aa) Systems serving 500 or fewer people may forego the task contained in paragraph (c)(ii)(B) of this section. Such a system may limit the distribution of the public education materials required under paragraph (c)(ii)(C) of this section to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children, unless it is notified by the Executive Secretary in writing that it must make a broader distribution.

(bb) If approved by the Executive Secretary in writing, a system serving 501 to 3,300 people may omit the task in paragraph (c)(ii)(B) of this section or limit the distribution of the public education materials required under paragraph (c)(ii)(C) of this section to facilities and organizations served by the system that are most likely to be visited regularly by pregnant wornen and children.

(B) A community water system serving 3,300 or fewer people that delivers public education in accordance with paragraph (c)(viii)(A) of this section shall repeat the required public education tasks at least once during each calendar year in which the system exceeds the lead action level.

(d) Supplemental monitoring and notification of results.

A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with R309-210-6(3) shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

(8) Reporting requirements.

All water systems shall report all of the following information to the Executive Secretary in accordance with this section.

(a) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring

(i) Except as provided in paragraph (a)(i)(H) of this section, a water system shall report the information specified below for all tap water samples specified in R309-210-6(3) and for all water quality parameter samples specified in R309-210-6(5) within the first 10 days following the end of each applicable monitoring period specified in R309-210-6 (3) and (5) (i.e., every six months, annually, every 3 years, or every 9 years).

(A) the results of all tap samples for lead and copper including the location of each site and the criteria under R309-210-6(3)(a)(iii),

(iv), (v), (vi), and (vii) under which the site was selected for the system's sampling pool;

(B) Documentation for each tap water lead or copper sample for which the water system request invalidation pursuant to R309-210-6(3)(f)(ii);

(D) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period, (calculated in accordance with R309-200-5(2)(c))unless the Executive Secretary calculates the system's 90th percentile lead and copper levels under paragraph (h) of this section;

(E) with the exception of initial tap sampling conducted pursuant to R309-210-6(3)(d)(i), the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(F) the results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under R309-210-6(5)(b) through (e);

(G) the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under R309-210-6(5)(b) through (e).

(H) A water system shall report the results of all water quality parameter samples collected under R309-210-6(5)(c) through (f) during each six month monitoring period specified in R309-210-6(5)(d) within the first 10 days following the end of the monitoring period unless the Executive Secretary has specified a more frequent reporting requirement.

(ii) For a non-transient non-community water system, or a community water system meeting the criteria of R309-210-6(8)(c)(vii)(A) or (B), that does not have enough taps that can provide first draw samples, the system must identify, in writing, each site that did not meet the six hour minimum standing time and the length of standing time for that particular substitute sample collected pursuant to R309-210-6(3)(b)(v) and include this information with the lead and copper tap sample results required to be submitted pursuant to paragraph (a)(i)(A) of this section. The Executive Secretary has waived prior State approval of non-first-draw samples sites selected by the system pursuant to R309-210-6(3)(b)(v).

(iii) No later than 60 days after the addition of a new source or any change in water treatment, unless the Executive Secretary required earlier notification, a water system deemed to have optimized corrosion control under R309-210-6(3)(b)(iii), a water system subject to reduced monitoring pursuant to R309-210-6(3)(d)(iv), or a water system subject to a monitoring waiver pursuant to R309-210-6(3)(g), shall send written documentation to the Executive Secretary describing the change. In those instances where prior Executive Secretary approval of the treatment change or new source is not required, water systems are encouraged to provide the notification to the Executive Secretary beforehand to minimize the risk the treatment change or new source will adversely affect optimal corrosion control.

(iv) Any small system applying for a monitoring waiver under R309-210-6(3)(g), or subject to a waiver granted pursuant to R309-210-6(3)(g)(iii), shall provide the following information to the Executive Secretary in writing by the specified deadline:

(A) By the start of the first applicable monitoring period in R309-210-6(3), any small system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of R309-210-6(3)(g)(i) and (ii).

(B) No later than nine years after the monitoring previously conducted pursuant to R309-210-6(3)(g)(ii) or (g)(iv)(A), each small system desiring to maintain its monitoring waiver shall provide the information required by R309-210-6(3)(g)(iv)(A) and (B).

(C) No later than 60 days after it becomes aware that it is no longer free of lead-containing or copper containing material, as appropriate, each small system with a monitoring waiver shall provide written notification to the Executive Secretary, setting forth the circumstances resulting in the lead containing or copper containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials

(D) By October 10, 2000, any small system with a waiver granted prior to April 11, 2000 and that has not previously met the requirements of R309-210-6(3)(g)(ii) shall provide the information required by that paragraph.

(v) Each ground water system that limits water quality parameter monitoring to a subset of entry points under R309-210-6(5)(c)(iii) shall provide, by the commencement of such monitoring, written correspondence to the Executive Secretary that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(b) Source water monitoring reporting requirements

(i) A water system shall report the sampling results for all source water samples collected in accordance with R309-210-6(6) within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in R309-210-6(6).

(ii) With the exception of the first round of source water sampling conducted pursuant to R309-210-6(6)(b), the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(c) Corrosion control treatment reporting requirements

By the applicable dates under R309-210-6(2), systems shall report the following information:

(i) for systems demonstrating that they have already optimized corrosion control, information required in R309-210-6(2)(b)(ii) or R309-210-6(2)(b)(iii).

(ii) for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under R309-210-6(4)(a)(i).

(iii) for systems required to evaluate the effectiveness of corrosion control treatments under R309-210-6(4)(a)(iii), the information required by that paragraph.

(iv) for systems required to install optimal corrosion control designated by the Executive Secretary under R309-210-6(4)(a)(iv), a letter certifying that the system has completed installing that treatment.

(d) Source water treatment reporting requirements

By the applicable dates in R309-210-6(4)(b), systems shall provide the following information to the Executive Secretary :

(i) if required under R309-210-6(4)(b)(ii)(A), their recommendation regarding source water treatment;

(ii) for systems required to install source water treatment under R309-210-6(4)(b)(ii)(B), a letter certifying that the system has completed installing the treatment designated by the Executive Secretary within 24 months after the Executive Secretary designated the treatment.

(e) Lead service line replacement reporting requirements

Systems shall report the following information to the Executive Secretary to demonstrate compliance with the requirements of R309-210-6(4)(c):

(i) Within 12 months after a system exceeds the lead action level in sampling referred to in R309-210-6(4)(c)(i), the system shall demonstrate in writing to the Executive Secretary that it has conducted a materials evaluation, including the evaluation in R309-210-6(3)(a), to identify the initial number of lead service lines in its distribution system, and shall provide the Executive Secretary with the system's schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(ii) Within 12 months after a system exceeds the lead action level in sampling referred to in R309-210-6(4)(c)(i), and every 12 months thereafter, the system shall demonstrate to the Executive Secretary in writing that the system has either:

(A) replaced in the previous 12 months at least 7 percent of the initial lead service lines (or a greater number of lines specified by the Executive Secretary under R309-210-6(4)(c)(v)) in its distribution system, or

(B) conducted sampling which demonstrates that the lead concentration in all service line samples from an individual line(s), taken pursuant to R309-210-6(3)(b)(iii), is less than or equal to 0.015 mg/l. In such cases, the total number of lines replaced or which meet the criteria in R309-210-6(4)(c)(iii) shall equal at least 7 percent of the initial number of lead lines identified under R309-210-6(8)(a) (or the percentage specified by the Executive Secretary under R309-210-6(4)(c)(v)).

(iii) The annual letter submitted to the Executive Secretary under R309-210-6(8)(e)(ii) shall contain the following information:

(A) the number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

(B) the number and location of each lead service line replaced during the previous year of the system's replacement schedule;

(C) if measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(iv) Systems shall also report any additional information as specified by the State, and in a time and manner prescribed by the Executive Secretary, to verify that all partial lead service line replacement activities have taken place.

(f) Public education program reporting requirements

(i) Any water system that is subject to the public education requirements in R309-210-6(7) shall , within ten days after the end of each period in which the system is required to perform public education tasks in accordance with R309-210-6(7)(c), send written documentation to the Executive Secretary that contains:

(A) A demonstration that the system has delivered the public education materials that meet the content requirements in R309-210-6(7)(a) and (b) and the delivery requirements in R309-210-6(7)(c); and

(B) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(ii) Unless required by the Executive Secretary, a system that previously has submitted the information required by paragraph (f)(i)(B) of this section, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(g) Reporting of additional monitoring data

Any system which collects sampling data in addition to that required by this subpart shall report the results to the Executive Secretary within the first ten day following the end of the applicable monitoring period under R309-210-6(3), R309-210-6(5) and R309-210-6(6) during which the samples are collected.

(h) Reporting of 90th percentile lead and copper concentrations where the Executive Secretary calculates a system's 90th percentile concentrations. A water system is not required to report the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples during each monitoring period, as required by paragraph (a)(i)(D) of this section if:

(i) The Executive Secretary has previously notified the water system that it will calculate the water system's 90th percentile lead and copper concentrations, based on the lead and copper tap results submitted pursuant to paragraph (h)(ii)(A) of this section, and has specified a date before the end of the applicable monitoring period by which the system must provide the results of lead and copper tap water samples;

(ii) The system has provided the following information to the Executive Secretary by the date specified in paragraph (h)(i) of this section:

(A) The results of all tap samples for lead and copper including the location of each site and the criteria under R309-210-6(3)(a)(iii), (iv), (v), (vi), and/or (vii) under which the site was selected for the system's sampling pool, pursuant to paragraph (a)(i)(A) of this section; and

(B) An identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed; and

(iii) The Executive Secretary has provided the results of the 90th percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

R309-210-7. Asbestos Distribution System Monitoring.

(1) The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in R309-200-5(1) shall be conducted as follows:

(a) Each community and non-transient non-community water system is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(b) If the system believes it is not vulnerable due to corrosion of asbestos-cement pipe, it may apply to the Executive Secretary for a waiver of the monitoring requirement in paragraph (a) of this section. If the Executive Secretary grants the waiver, the system is not required to monitor for asbestos.

(c) The Executive Secretary may grant a waiver based on a consideration of the use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(d) A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the provisions of paragraph (a) of this section.

(2) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(3) A system vulnerable to asbestos contamination due both to its source water supply (as specified in R309-205-5(2)) and corrosion of asbestos-cement pipe shall take one sample at a tap

served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(4) A system which exceeds the maximum contaminant levels as determined in R309-205-5(1)(g) shall monitor quarterly beginning in the next quarter after the violation occurred.

(5). The Executive Secretary may decrease the quarterly monitoring requirement to the frequency specified in paragraph (a) of this section provided the Executive Secretary has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

(6) If monitoring data collected after January 1, 1990 are generally consistent with the requirements of R309-210-7, then the Executive Secretary may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

R309-210-8. Disinfection Byproducts Monitoring.

(1) Monitoring Requirements for Total Trihalomethanes. Community water systems serving 10,000 or more people and using disinfection must sample for Total Trihalomethane. Non-transient non-community and non-community water systems are not required to monitor for total trihalomethanes.

(a) Groundwater systems may choose to monitor for Total Trihalomethane Formation Potential (THMFP) or TTHM compounds with the approval of the Executive Secretary.

(b) Surface water systems must monitor using quarterly routine TTHM quenched samples only. THMFP samples shall not be used to determine compliance with this MCL when surface sources are used.

(2) Sampling Locations For Trihalomethanes

(a) THMFP samples

A THMFP sample shall be collected in a representative manner at the point of entry to the distribution system following disinfection. One sample must be collected for each disinfected source in duplicate. Compliance for each source is based on measurement of this sample. If the results of this sample are well below 100 micrograms per liter, reduced monitoring can be requested of the Executive Secretary.

(b) Routine TTHM Samples

Samples shall be collected from the distribution system for routine TTHM quenched analysis and not the source. At least 25% of all samples collected representing each chlorinated source shall represent the extremes of the distribution system to which disinfected water travels. Operators are required to check for a chlorine residual before collecting any TTHM samples. A chlorine residual of at least 0.2 ppm shall be present at all sampling points.

(3) Sampling Frequency for Trihalomethanes

For TTHM samples, four samples, all collected on the same day, shall be collected each calendar quarter representing each disinfected source. All samples shall be collected in duplicate, although laboratories may only analyze one of these. This is a required quality control procedure for each certified laboratory.

For THMFP samples, only one sample need be collected (see paragraph (2) above).

(4) Reduced Sampling for Trihalomethanes

(a) Systems with surface sources which have four consecutive calendar quarters of data may petition the Executive Secretary for reduced monitoring if the MCL has been met. Upon approval of reduced monitoring by the Executive Secretary, surface water sources shall be analyzed at least once per calendar year for TTHM compounds. Subsequent samples shall be collected from the extreme end of the distribution system. A chlorine residual of at least a detectable level shall be present at the point of sampling.

(b) Systems with groundwater sources that have either completed a THMFP test or that have completed four consecutive calendar quarters may petition the Executive Secretary for reduced monitoring if the MCL has been met. Upon approval of reduced monitoring by the Executive Secretary, groundwater sources shall be analyzed at least once per year for TTHM compounds. Subsequent samples shall be collected from the extreme end of the distribution system. A chlorine residual of at least a detectable level shall be present at the point of sampling.

(5) Reporting of Results of Trihalomethane Monitoring

All results of TTHM samples shall be reported to the Executive Secretary within 10 days of the receipt of the analysis.

(6) Procedures if Total Trihalomethane MCL is Exceeded

(a) If the quarterly average of TTHM samples or THMFP samples exceeds 100 micrograms per liter, the Executive Secretary shall be so informed in writing within 10 days of the end of any month in which these analyses were performed.

(b) An accelerated sampling program shall be undertaken as determined by the Executive Secretary.

(c) Alteration of the existing treatment processes or installation of new processes for TTHM reduction shall be required if an MCL is not met. A compliance schedule shall be established which outlines any pilot studies necessary together with a plan and time schedule for completion of construction which will remedy the MCL violation. Modifications shall not endanger adequate disinfection of water in the system.

(d) When an MCL is violated, or is near the limit, action shall be taken by the suppliers involved. Generally, the Executive Secretary will notify the supplier of special sampling which is necessary on a case by case basis.

Two possibilities in this area are:

(i) A wholesaler-retailer relationship. In general, the burden in this case shall be on the supplier adding the disinfectant to show that the results of additional THMFP tests are well within limitations. Additional THMFP tests and TTHM tests may be required of the supplier distributing this water, but not treating it, to clarify the situation. The Executive Secretary shall decide the responsibility in these cases and send written confirmation of this finding to both suppliers involved.

(ii) A situation where not all sources on the system are disinfected, yet deliver water to the same system. In this case, the cause of non-compliance must be determined to be either a chlorinated source problem, a non-chlorinated source - chlorinated source interaction, a distribution system reaction, or other. The Executive Secretary shall require such tests as are necessary to resolve the problem.

As with any action, this decision may be appealed to the Utah Drinking Water Board.

(e) Notification of State and Public

When the maximum contaminant level as set forth in R309-200-5(c) is exceeded, the supplier of water shall give public notice as required in R309-220.

KEY: drinking water, distribution system monitoring, compliance determinations
August 12, 2002

19-4-104
63-46b-4

Environmental Quality, Drinking Water
R309-215
Monitoring and Water Quality: Treatment Plant Monitoring Requirements

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24982
FILED: 06/14/2002, 15:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule is to adhere to a reorganization of the Division's rules (R309) containing a more logical separation of water system requirements and to maintain a more consistent referencing standard within the Division's rules. Additional changes clarify the monthly monitoring requirements of groundwater sources that are disinfected.

SUMMARY OF THE RULE OR CHANGE: The proposed rule contains the part of the existing Rule R309-104 that details the water systems monitoring requirements for surface water treatment plants; and also contains clarification and detail of the requirements for groundwater sources that are disinfected as currently required by Section R309-102-4 (changing to Section R309-105-10). (DAR NOTE: The proposed amendments to Rule R309-104 are under DAR No. 24984 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This new rule incorporates requirements from an existing rule and does not add any additional requirements. The clarification and detail described in the summary of the rule change above do not add any substantive cost or savings-related activities.
❖ LOCAL GOVERNMENTS: No impact--This new rule incorporates requirements from an existing rule and does not add any additional requirements. The clarification and detail described in the summary of the rule change above do not add any substantive cost or savings-related activities.
❖ OTHER PERSONS: No impact--This new rule incorporates requirements from an existing rule and does not add any additional requirements. The clarification and detail described in the summary of the rule change above do not add any substantive cost or savings-related activities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule incorporates requirements from an existing rule and does not add any additional requirements. The clarification and detail described in the summary of the rule change above do not add any substantive cost or savings for compliance-related activities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Patti Fauver or Ken Bousfield at the above address, by phone at 801-536-4196 or 801-536-4207, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at pfauver@deq.state.ut.us or kbousfie@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.
R309-215-1. Purpose.
The purpose of this rule is to outline the monitoring and reporting requirements for public water systems which treat water prior to providing it for human consumption.

R309-215-2. 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 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-215-3. Definitions.
Definitions for certain terms used in this rule are given in R309-110.

R309-215-4. General.
(1) All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-200. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

(3) If the water fails to meet minimum standards, then certain public notification procedures shall be carried out, as outlined in R309-220. Water suppliers shall also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

(4) All samples shall be taken at representative sites as specified herein for each contaminant or group of contaminants.

(5) For the purpose of determining compliance, samples may only be considered if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory.

(6) Measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible operator, be performed by any water supplier or their representative.

(7) All samples must be marked either: routine, repeat, check or investigative before submission of such samples to a certified laboratory. Routine, repeat, and check samples shall be considered compliance purpose samples.

(8) All sample results can be sent to the Division of Drinking Water either electronically or in hard copy form.

(9) Unless otherwise required by the Board, the effective dates on which required monitoring shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001 by the Office of the Federal Register

(10) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

R309-215-6. Monitoring Requirements for Groundwater Disinfection.

(1) General: Continuous disinfection is recommended for all drinking water sources. Continuous disinfection shall be required of all groundwater sources which do not consistently meet standards of bacteriologic quality. Once required by the Executive Secretary continuous disinfection shall not be interrupted nor terminated unless so authorized, in writing, by the Executive Secretary.

(2) Disinfection Reporting: For each disinfection treatment facility, plant management shall report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(a) For each day;

(i) the total volume of water treated by the facility,

(ii) the type and amount of disinfectant used in the treating the water (clearly indicating the weight if gas feeders are used, or the percent solution and volume fed if liquid feeders are used),

(iii) the setting of rotometer valve or injector pump,

(iv) the residual level of free chlorine found in the distribution system, and

(v) the location where the chlorine residual was sampled.

(b) Monthly, certify, by signing the report form provided by the Division that;

(i) all information provided is accurate and correct, and

(ii) any chemical introduced into the drinking water complies with ANSI/NSF Standard 60.

(c) A malfunction of any facility or equipment such that a detectable residual cannot be maintained throughout the distribution system. The system must notify the Division as soon as possible, but no later than by the end of the next business day. The system also must notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within four hours.

(d) A sample indicates that the Maximum residual disinfectant level (MRDL) has been exceeded.

R309-215-7. Monitoring Requirements for Miscellaneous Treatment Plants.

(1) General: Treatment of drinking water may be required for other than inactivation of microbial contaminants indicated above or removal/inactivation of pathogens and viruses as indicated below. For miscellaneous treatment methods indicated in R309-535, the Executive Secretary may require monitoring and reporting. If required, report forms will be provided by the Division.

R309-215-8. Monitoring Requirements for Surface Water Treatment Plants.

(1) General: Surface water sources or groundwater sources under direct influence of surface water shall be disinfected during the course of required surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor the plant's operation as indicated below and report the results to the Division. Individual plants will be evaluated in accordance with the criteria outlined in R309-215-8(6). Based on information submitted and/or plant inspections, the plant will receive credit for treatment techniques other than disinfection that remove pathogens, specifically Giardia lamblia and viruses. This credit (log removal) will reduce the required disinfectant "CT" value which the plant must maintain to assure compliance with R309-200-5(7)(a)(i).

(2) Surface Water Treatment Reporting: Treatment plant management shall report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(a) For each day;

(i) if the plant treats water from multiple sources, the sources being utilized and the ratio for each if blending occurs.

(ii) the total volume of water treated by the plant,

(iii) the turbidity of the raw water entering the plant,

(iv) the pH of the effluent water, measured at or near the monitoring point for disinfectant residual,

(v) the temperature of the effluent water, measured at or near the monitoring point for disinfectant residual,

(vi) the type and amount of chemicals used in the treatment process (clearly indicating the weight and active percent of chemical if dry feeders are used, or the percent solution and volume fed if liquid feeders are used),

(vii) the high and low temperature and weather conditions (local forecast information may be used, but any precipitation in the watershed should be further described as light, moderate, heavy, or extremely heavy), and

(viii) the results of any "jar tests" conducted that day

(b) For each filter, each day;

(i) the rate of water applied to each (gpm/sq.ft.),

(ii) the head loss across each (feet of water or psi),

(iii) length of backwash (if conducted; in minutes), and

(iv) hours of operation since last backwashed.

(c) Annually; certify in writing as required by R309-105-14(1) that when a product containing acrylamide and/or epichlorohydrin is used, the combination of the amount of residual monomer in the

polymer and the dosage rate does not exceed the levels specified as follows:

(i) Acrylamide: 0.05%, when dosed at 1 part per million, and

(ii) Epichlorohydrin: 0.01%, when dosed at 20 parts per million.

Certification may rely on manufacturers data.

(3) Turbidity: Treatment plant management shall monitor for turbidity and report to the Division as outlined below:

(a) Routine Monitoring Requirements for Treatment Facilities utilizing surface water sources or ground water sources under the direct influence of surface water.

(i) All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor for turbidity at the treatment plant's clearwell outlet. This monitoring shall be independent of the individual filter monitoring required by R309-525-15(4)(b)(vi) and R309-121-15(4)(c)(vii). Where the plant facility does not have an internal clearwell, the turbidity must be monitored at the inlet to a finished water reservoir external to the plant provided such reservoir receives only water from the treatment plant and, furthermore, is located before any point of consumer connection to the water system. If such external reservoir does not exist, turbidity must then be monitored at a location immediately downstream of the treatment plant filters.

(ii) All treatment plants, with the exception of those utilizing slow sand filtration and other conditions indicated in section (iii) below, shall be equipped with continuous turbidity monitoring and recording equipment for which the direct responsible charge operator will validate the continuous measurements for accuracy in accordance with paragraph (iv) below. These plants shall continuously record the finished water turbidity.

(iii) Turbidity measurements, as outlined below, must be reported to the Division within ten days after the end of each month that the system serves water to the public. Systems are required to mark and interpret turbidity values from the recorded charts at the end of each four-hour interval of operation (or some shorter regular time interval) to determine compliance with the turbidity performance criterion. For systems using slow sand filtration the Executive Secretary may reduce the sampling frequency to as little as once per day if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the Executive Secretary may reduce the turbidity sampling frequency to as little as once per day, regardless of the type of filtration treatment used, if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance.

The following must be reported and the required percentage achieved for compliance:

(A) The total number of interpreted filtered water turbidity measurements taken during the month;

(B) The number and percentage of interpreted filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in R309-200-5(5)(a)(ii) (or increased limit approved by the Executive Secretary). The percentage of measurements which are less than or equal to the turbidity limit must be 95 percent or greater for compliance; and

(C) The date and value of any turbidity measurements taken during the month which exceed 5 NTU. The system must inform the Division as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with R309-220-6(2)(c) if any turbidity measurements exceed 5 NTU.

(iv) The analytical method which must be followed in making the required determinations shall be Nephelometric Method - Nephelometric Turbidity Unit as set forth in the latest edition of Standard Methods for Examination of Water and Wastewater, 1985, American Public Health Association et al., (Method 214A, pp. 134-136 in the 16th edition). Continuous turbidity monitoring equipment must be checked for accuracy and recalibrated using methods outlined in the above standard at a minimum frequency of monthly. The direct responsible charge operator will note on the turbidity report form when these recalibrations are conducted.

(b) Procedures if a Filtered Water Turbidity Limit is Exceeded

(i) Resampling -

If an analysis indicates that the turbidity limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour.

(ii) If the result of resampling confirms that the turbidity limit has been exceeded, the system shall collect and have analyzed at least one bacteriologic sample near the first service connection from the source as specified in R309-210-5(1)(f). The system shall collect this bacteriologic sample within 24 hours of the turbidity exceedance. Sample results from this monitoring shall be included in determining bacteriologic compliance for that month.

(iii) Initial Notification of the State -

If the repeat sample confirms that the turbidity limit has been exceeded, the supplier shall report this fact to the Executive Secretary as soon as practical, but no later than 24 hours after the exceedance is known in accordance with the public notification requirements under R309-220-6(2)(c). This reporting is in addition to reporting the incident on any monthly reports.

(c) For the purpose of individual plant evaluation and establishment of pathogen removal credit for the purpose of lowering the required "CT" value assigned a plant, plant management may do additional turbidity monitoring at other points to satisfy criteria in R309-215-8(6).

(4) Residual Disinfectant: Treatment plant management shall continuously monitor disinfectant residuals and report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(a) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies listed in Table 215-1 below:

TABLE 215-1
RESIDUAL GRAB SAMPLE FREQUENCY

System size by population	Samples/day
Less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

Note: The day's samples cannot be taken at the same time. The sampling intervals are subject to Executive Secretary's review and approval.

(b) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system

fell below 0.2 mg/l and when the Division was notified of the occurrence. The system must notify the Division as soon as possible, but no later than by the end of the next business day. The system also must notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within four hours.

(c) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to R309-210-5:

(i) number of instances where the residual disinfectant concentration is measured;

(ii) number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(iii) number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(iv) number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml;

(v) number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml;

(vi) for the current and previous month the system serves water to the public, the value of "V" in the formula, V = ((c+d+e)/(a+b)) x 100, where a = the value in sub-section (i) above, b = the value in sub-section (ii) above, c = the value in sub-section (iii) above, d = the value in sub-section (iv) above, and e = the value in sub-section (v) above.

(5) Waterborne Disease Outbreak: Each public water system, upon discovering that a waterborne disease outbreak as defined in R309-110 potentially attributable to their water system has occurred, must report that occurrence to the Division as soon as possible, but no later than by the end of the next business day.

(6) Criteria for Individual Treatment Plant Evaluation: New and existing water treatment plants must meet specified monitoring and performance criteria in order to ensure that filtration and disinfection are satisfactorily practiced. The monitoring requirements and performance criteria for turbidity and disinfection listed above provide the minimum for the Division to evaluate the plant's efficiency in removing and/or inactivating 99.9 percent (3-log) of Giardia lamblia cysts and 99.99 percent (4-log) of viruses as required by R309-505-6(2)(a) and (b).

(7) The Division, upon evaluation of individual raw water sources, surface water or ground water under the direct influence of surface water, may require greater than the 3-log, 4-log removal/inactivation of Giardia and viruses respectfully. If a raw water source exhibits an estimated concentration of 1 to 10 Giardia cysts per 100 liters, 4 and 5-log removal/inactivation may be required. If the raw water exhibits a concentration of 10 to 100 cysts per 100 liters, 5 and 6-log removal/inactivation may be required.

(8) The Division, upon individual plant evaluation, may assign the treatment techniques (coagulation, flocculation, sedimentation and filtration) credit toward removal of Giardia cysts and viruses. The greater the number of barriers in the treatment process, the greater the reduction of pathogens, therefore lessor credit will be given to processes such as direct filtration which eliminate one or more conventional barriers. Plants may monitor turbidity at multiple points in the treatment process as evidence of the performance of an individual treatment technique.

(9) The nominal credit that will be assigned certain conventional processes are outlined in Table 215-2:

TABLE 215-2
CONVENTIONAL PROCESS CREDIT

Process	Log Reduction Credit Giardia	Viruses
Conventional Complete Treatment	2.5	2.0
Direct Filtration	2.0	1.0
Slow Sand Filtration	2.0	2.0
Diatomaceous Earth Filters	2.0	1.0

(10) Upon evaluation of information provided by individual plants or obtained during inspections by Division staff, the Division may increase or decrease the nominal credit assigned individual plants based on that evaluation.

(a) Items which would augment the treatment process and thereby warrant increased credit are:

(i) facilities or means to moderate extreme fluctuations in raw water characteristics;

(ii) sufficient on-site laboratory facilities regularly used to alert operators to changes in raw water quality;

(iii) use of pilot stream facilities which duplicate treatment conditions but allow operators to know results of adjustments much sooner than if only monitoring plant effluent;

(iv) use of additional monitoring methods such as particle size and distribution analysis to achieve greater efficiency in particulate removal;

(v) regular program for preventive maintenance, records of such, and general good housekeeping; or

(vi) adequate staff of well trained and certified plant operators.

(b) Items which would be considered a detriment to the treatment process and thereby warrant decreased credit are:

(i) inadequate staff of trained and certified operators;

(ii) lack of regular maintenance and poor housekeeping; or

(iii) insufficient on-site laboratory facilities.

KEY: drinking water, surface water treatment plant monitoring, disinfection monitoring, compliance determinations
August 12, 2002
19-4-104
63-46b-4

Environmental Quality, Drinking Water
R309-220
Monitoring and Water Quality: Public Notification Requirements.

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24981
FILED: 06/14/2002, 15:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule is to address the changes required by the Federal Public Notification regulation. This rule adoption is necessary to maintain primacy.

SUMMARY OF THE RULE OR CHANGE: This rule contains updated requirements from the part of the existing Rule R309-104 that detailed public notification (Section R309-104-7). The new requirements change the timing of required public notification, tightening the timeframe to 24 hours for the most serious water quality problems (Tier 1) to allowing up to a year for the more procedural type violations (Tier 3). The new requirements also dictate a more consistent format water systems must follow when providing public notice. (DAR NOTE: The proposed amendments to Rule R309-104 are under DAR No. 24984 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No impact--This new rule does not add any additional requirements. The new rule requires more information to be placed in the notice that systems are currently required to give and changes the timing of the notice. The processing and tracking of the public notification will not be significantly affected by these new requirements. This rule does not add any substantive cost or savings-related activities.

❖ LOCAL GOVERNMENTS: No impact--This new rule does not add any additional requirements. The new requirements change the timing of the pulic notification where in all but the most significant public health violations allow the system to combine the notice with other water system activities (i.e., billing notices, annual water quality reports, etc.), for the most significant public health violations the timing has been accelerated from 72 hours to 24 hours for notification. The format of the notice does require more information, however, the additional information should not require any additional printing or distribution costs. This rule does not add any substantive cost or savings-related activities.

❖ OTHER PERSONS: No impact--This new rule does not add any additional requirements. The new rule requires more information to be placed in the notice that systems are currently required to give and changes the timing of the notice. This rule does not add any substantive cost or savings-related activities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule does not add any additional requirements. The new requirements change the timing of the pulic notification where in all but the most significant public health violations allow the system to combine the notice with other water system activities (i.e., billing notices, annual water quality reports, etc.), for the most significant public health violations the timing has been accelerated from 72 hours to 24 hours for notification. The format of the notice does require more information, however, the additional information should not require any additional printing or distribution costs. This new rule does not add any substantive cost or savings for compliance related activities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Ken Bousfield or Patti Fauver at the above address, by phone at 801-536-4207 or 801-536-4196, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at kbousfie@deq.state.ut.us or pfauver@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-220. Monitoring and Water Quality: Public Notification Requirements.
R309-220-1. Purpose.

The purpose of this rule is to outline the public notification requirements for public water systems.

R309-220-2 Authority.
R309-220-3 Definitions.
R309-220-4 General public notification requirements.
R309-220-5 Tier 1 Public Notice - Form, manner, and frequency of notice.
R309-220-6 Tier 2 Public Notice - Form, manner, and frequency of notice.
R309-220-7 Tier 3 Public Notice - Form, manner, and frequency of notice.
R309-220-8 Content of the public notice.
R309-220-9 Notice to new billing units or new customers.
R309-220-10 Special notice of the availability of unregulated contaminant monitoring results.
R309-220-11 Special notice for exceedance of the SMCL for fluoride.
R309-220-12 Special notice for nitrate exceedances above MCL by non-community water systems (NCWS), where granted permission by the Executive Secretary.
R309-220-13 Notice by Executive Secretary on behalf of the public water system.
R309-220-14 Standard Health Effects Language

R309-220-2. 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 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-220-3. Definitions.

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

R309-220-4. General Public Notification Requirements.

(1) Violation Categories and Other Situations Requiring a Public Notice:

Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of these rules and for other situations, as listed below. The term "UPDWR violations" is used in this subpart to include violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures contained in R309-100 through R309-215.

(a) UPDWR Violations:

(i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).

(ii) Failure to comply with a prescribed treatment technique (TT).

(iii) Failure to perform water quality monitoring, as required by the drinking water regulations.

(iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.

(b) Variance and Exemptions Under R309-10 and R309-11.

(i) Operation under a variance or an exemption.

(ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.

(c) Special Public Notices

(i) Occurrence of a waterborne disease outbreak or other waterborne emergency.

(ii) Exceedance of the nitrate MCL by non-community water systems (NCWS), where granted permission by the Executive Secretary under R309-200-5(1)(c), Table 200-1, note (4)(b).

(iii) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride.

(iv) Availability of unregulated contaminant monitoring data.

(v) Other violations and situations determined by the Executive Secretary to require a public notice under this subpart.

(2) Definition of Public Notice Tiers:

Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in paragraph (1) of this section are determined by the tier to which it is assigned. Each tier is defined below:

(a) Tier 1 public notice -- required for UPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.

(b) Tier 2 public notice -- required for all other UPDWR violations and situations with potential to have serious adverse effects on human health.

(c) Tier 3 public notice -- required for all other UPDWR violations and situations not included in Tier 1 and Tier 2.

(3) Required Distribution of Notice

(a) Each public water system must provide public notice to persons served by the water system, in accordance with this rule. Public water systems that sell or otherwise provide drinking water to other public water systems (i.e., to consecutive systems) are required to give public notice to the owner or operator of the consecutive system; the consecutive system is responsible for providing public notice to the persons it serves.

(b) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Executive Secretary may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the Executive Secretary for limiting distribution of the notice must be granted in writing.

(c) A copy of the notice must also be sent to the Executive Secretary, in accordance with the requirements under R309-105-16.

R309-220-5. Tier 1 Public Notice -- Form, Manner and Frequency of Notice.

(1) Violation Categories and Other Situations Requiring a Tier 1 Public Notice:

(a) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system (as specified in R309-200-5(6)(b)), or when the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform (as specified in R309-205-5(5));

(b) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in R309-200-5(1)(c), Table 200-1, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in R309-205-5(1)(e)(ii);

(c) Exceedance of the nitrate MCL by non-community water systems, where permitted to exceed the MCL by the Executive Secretary under R309-200-5(1)(c), Table 200-1, note (4)(b), as required under R309-220-12;

(d) Violation of the MRDL for chlorine dioxide, as defined in 40 CFR section 141.65(a), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in 40 CFR section 141.133(c)(2)(i);

(e) Violation of the turbidity MCL under R309-200-5(5)(a), where the Executive Secretary determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(f) Violation of the Surface Water Treatment Rule (SWTR) or Interim Enhanced Surface Water Treatment rule (IESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit, where the Executive Secretary determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(g) Occurrence of a waterborne disease outbreak, as defined in R309-110, or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);

(h) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the Executive Secretary either in its rules or on a case-by-case basis.

(2) Frequency of the Tier 1 Public Notice and Additional Steps Required:

Public water systems must:

(a) Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation;

(b) Initiate consultation with the Executive Secretary as soon as practical, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and

(c) Comply with any additional public notification requirements (including any repeat notices or direction on the duration of the posted notices) that are established as a result of the consultation with the Executive Secretary. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.

(3) Form and Manner of the Public Notice:

Public water systems must provide the notice within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery:

(a) Appropriate broadcast media (such as radio and television);

(b) Posting of the notice in conspicuous locations throughout the area served by the water system;

(c) Hand delivery of the notice to persons served by the water system; or

(d) Another delivery method approved in writing by the Executive Secretary.

R309-220-6. Tier 2 Public Notice -- Form, Manner and Frequency of Notice.

(1) Violation Categories And Other Situations Requiring a Tier 2 Public Notice:

(a) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under R309-220-5(1) or where the Executive Secretary determines that a Tier 1 notice is required;

(b) Violations of the monitoring and testing procedure requirements, where the Executive Secretary determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and

(c) Failure to comply with the terms and conditions of any variance or exemption in place.

(2) Frequency of the Tier 2 Public Notice:

(a) Public water systems must provide the public notice as soon as practical, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The Executive Secretary may, in appropriate circumstances, allow additional time for the initial notice of up to three months from the date the system learns of the violation. It is not appropriate for the Executive Secretary to grant an extension to the 30-day deadline for any unresolved violation or to allow across-the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the Executive Secretary must be in writing.

(b) The public water system must repeat the notice every three months as long as the violation or situation persists, unless the Executive Secretary determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the Executive Secretary to allow less frequent repeat notice for an MCL violation under the Total Coliform Rule or a treatment technique violation under the Surface Water Treatment Rule or Interim Enhanced Surface Water Treatment Rule. It is also not appropriate for the Executive Secretary to allow through its rules or policies across-the-board reductions in the repeat notice frequency for other ongoing violations requiring a Tier 2 repeat notice. Executive Secretary determinations allowing repeat notices to be given less frequently than once every three months must be in writing.

(c) For the turbidity violations specified in this paragraph, public water systems must consult with the Executive Secretary as soon as practical but no later than 24 hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under R309-220-5(1) is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours (i.e., no later than 48 hours after the system learns of the violation), following the requirements under R309-220-5(2) and (3). Consultation with the Executive Secretary is required for:

(i) Violation of the turbidity MCL under R309-200-5(5)(a); or

(ii) Violation of the SWTR or IESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.

(3) Form and Manner of the Public Notice:

Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(a) Unless directed otherwise by the Executive Secretary in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (3)(a)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations.

(b) Unless directed otherwise by the Executive Secretary in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in paragraph (3)(b)(i) of this section. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or

newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

R309-220-7. Tier 3 Public Notice -- Form, Manner and Frequency of Notice.

(1) Violation Categories And Other Situations Requiring a Tier 3 Public Notice:

(a) Monitoring violations under R309-205, R309-210 and R309-215, except where a Tier 1 notice is required under R309-220-5(1) or where the Executive Secretary determines that a Tier 2 notice is required;

(b) Failure to comply with a testing procedure established in R309-205, R309-210 and R309-215, except where a Tier 1 notice is required under R309-220-5(1) or where the Executive Secretary determines that a Tier 2 notice is required;

(c) Operation under a variance granted under R309-100-10;

(d) Availability of unregulated contaminant monitoring results, as required under R309-220-10; and

(e) Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under R309-220-11.

(2) Frequency of the Tier 2 Public Notice:

(a) Public water systems must provide the public notice not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days (even if the violation or situation is resolved).

(b) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve months, as long as the timing requirements of paragraph (2)(a) of this section are met.

(3) Form and Manner of the Public Notice:

Public water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(a) Unless directed otherwise by the Executive Secretary in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (3)(a)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(b) Unless directed otherwise by the Executive Secretary in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (3)(b)(i) of this section. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(4) Use of the Consumer Confidence Report to meet the Tier 3 public notice requirements:

For community water systems, the Consumer Confidence Report (CCR) required under R309-225 may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:

(a) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under r309-220-7(2);

(b) The Tier 3 notice contained in the CCR follows the content requirements under R309-220-8; and

(c) The CCR is distributed following the delivery requirements under R309-220-7(3).

R309-220-8. Content of the Public Notice.

(1) When a public water system violates a UPDWR or has a situation requiring public notification, each public notice must include the following elements:

(a) A description of the violation or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);

(b) When the violation or situation occurred;

(c) Any potential adverse health effects from the violation or situation, including the standard language under paragraph (4)(a) or (4)(b) of this section, whichever is applicable;

(d) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(e) Whether alternative water supplies should be used;

(f) What actions consumers should take, including when they should seek medical help, if known;

(g) What the system is doing to correct the violation or situation;

(h) When the water system expects to return to compliance or resolve the situation;

(i) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(j) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (4)(c) of this section, where applicable.

(2) Required elements to be included in the public notice for public water systems operating under a variance or exemption:

(a) If a public water system has been granted a variance or an exemption, the public notice must contain:

(i) An explanation of the reasons for the variance or exemption;

(ii) The date on which the variance or exemption was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(b) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (1) of this section.

(3) Presentation of the public notice.

(a) Each public notice required by this section:

(i) Must be displayed in a conspicuous way when printed or posted;

(ii) Must not contain overly technical language or very small print;

(iii) Must not be formatted in a way that defeats the purpose of the notice;

(iv) Must not contain language which nullifies the purpose of the notice.

(b) Each public notice required by this section must comply with multilingual requirements, as follows:

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the Executive Secretary, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(ii) In cases where the Executive Secretary has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information as in paragraph (3)(b)(i) of this section, where appropriate to reach a large proportion of non-English speaking persons served by the water system.

(4) Public water systems are required to include the following standard language in their public notice:

(a) Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption. Public water systems must include in each public notice the health effects language specified in R309-220-14 corresponding to each MCL, MRDL, and treatment technique violation and for each violation of a condition of a variance or exemption.

(b) Standard language for monitoring and testing procedure violations.

Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations: "We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During (compliance period), we ('did not monitor or test' or 'did not complete all monitoring or testing') for (contaminant(s)), and therefore cannot be sure of the quality of your drinking water during that time."

(c) Standard language to encourage the distribution of the public notice to all persons served. Public water systems must include in their notice the following language (where applicable): "Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail."

R309-220-9. Notice to New Billing Units or New Customers.

(1) Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(2) Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

R309-220-10. Special Notice of the Availability of Unregulated Contaminant Monitoring Results.

(1) Applicability of the special notice: The owner or operator of a community water system or non-transient, non-community water system required to monitor under 40 CFR section 141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(2) Required form and manner of the special notice: The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in R309-220-7(3), (4)(a), and (4)(c). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

R309-220-11. Special Notice for Exceedance of the Secondary MCL for Fluoride.

(1) Applicability of the special notice: Community water systems that exceed the fluoride secondary maximum contaminant level (SMCL) of 2 mg/l as specified in R309-200-6 (determined by the last single sample taken in accordance with R309-205-5), but do not exceed the maximum contaminant level (MCL) of 4 mg/l for fluoride (as specified in R309-200-5), must provide the public notice in paragraph (3) of this section to persons served. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the State public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven days (even if the exceedance is eliminated). On a case-by-case basis, the Executive Secretary may require an initial notice sooner than 12 months and repeat notices more frequently than annually.

(2) Required form and manner of the special notice: The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in R309-220-7(3), (4)(a), and (4)(c).

(3) Required mandatory language to be contained in the special notice: The notice must contain the following language, including the language necessary to fill in the blanks:

This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental

fluorosis). The drinking water provided by your community water system (name) has a fluoride concentration of (insert value) mg/l.

Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

Drinking water containing more than 4 mg/l of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.

For more information, please call (name of water system contact) of (name of community water system) at (phone number). Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP.

R309-220-12. Special Notice for Nitrate Exceedances above MCL by Non-Community Water Systems (NCWS), where Granted Permission by the Executive Secretary.

(1) Applicability of the special notice: The owner or operator of a non-community water system granted permission by the Executive Secretary under R309-200-5(1)(c), Table 200-1, note (4)(b) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under R309-220-5 (1) and (2).

(2) Required form and manner of the special notice: Non-community water systems granted permission by the Executive Secretary to exceed the nitrate MCL under R309-200-5(1)(c), Table 200-1, note (4)(b) must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under R309-220-5(3) and the content requirements under R309-220-8.

R309-220-13. Notice by Executive Secretary on behalf of the Public Water System.

(1) The Executive Secretary may give the notice required by this rule on behalf of the owner and operator of the public water system if the Executive Secretary complies with the requirements of this rule.

(2) The owner or operator of the public water system remains responsible for ensuring that the requirements of this rule are met.

R309-220-14. Standard Health Effects Language.

Microbiological Contaminants:

(1) Total Coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) Fecal coliform/E.Coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(3) Total organic carbon. Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acides (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(4) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Surface Water Treatment Rule (SWTR) and Interim Enhanced Surface Water Treatment Rule (IESWTR) violations.

(5) Giardia lamblia. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(6) Viruses. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(7) Heterotrophic plate count (HPC) bacteria. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(8) Legionella. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(9) Cryptosporidium. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants:

(10) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(11) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(12) Combined Radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

(13) Uranium. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Inorganic Contaminants:

(14) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could

experience increases in blood cholesterol and decreases in blood sugar.

(15) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(16) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(17) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(18) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(19) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(20) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(21) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(22) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(23) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorisis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(24) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(25) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(26) Nitrate. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(27) Nitrite. Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(28) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(29) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Synthetic organic contaminants including pesticides and herbicides:

(30) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(31) 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(32) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(33) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(34) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(35) Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(36) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(37) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(38) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(39) Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.

(40) Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(41) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(42) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(43) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(44) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(45) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(46) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(47) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(48) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(49) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(50) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(51) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

(52) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

(53) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(54) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(55) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(56) Oxamyl (Vydate). Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(57) PCBs (Polychlorinated biphenyls). Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(58) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(59) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(60) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(61) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Contaminants:

(62) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(63) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

(64) Carbon Tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(65) Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

(66) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(67) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(68) Chlorine dioxide. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

(69) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(70) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(71) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(72) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(73) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(74) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(75) trans-1,2-Dicholoroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(76) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years

could have liver problems and may have an increased risk of getting cancer.

(77) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(78) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(79) Haloacetic Acids (HAA). Some piple who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

(80) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(81) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(82) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(83) 1,1,1,-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(84) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(85) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(86) TTHMs (Total Trihalomethanes). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

(87) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(88) Vinyl Chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(89) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

KEY: drinking water, public notification, health effects
August 12, 2002
19-4-104
63-46b-4

▼ ▼

Environmental Quality, Drinking Water
R309-225
Monitoring and Water Quality: Consumer Confidence Reports

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24980
FILED: 06/14/2002, 15:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is to address the changes required by the federal Consumer Confidence Report regulation. This rule adoption is necessary to maintain primacy.

SUMMARY OF THE RULE OR CHANGE: The rule contains the requirements for community water systems to provide their consumers with a water quality report on an annual basis. The format, information required, and delivery requirements are very prescriptive in the federal regulation. Utah community water systems have been preparing and delivering these Consumer Confidence Reports to their customers annually since October 1999, as required by the federal rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419 (amended August 6, 1996)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No impact--Although this rule adds additional requirements, the state has been performing the additional technical assistance and tracking based on an extension agreement with EPA. The additional enforcement responsibilities will add a minimal workload.

❖ LOCAL GOVERNMENTS: No impact--This rule adoption will change a federal requirement into a state/federal requirement. Utah community water system have been preparing and delivering these Consumer Confidence Reports to their customers annually since October 1999, as required by the federal rule.

❖ OTHER PERSONS: No impact--This rule change does not add any significant costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule adoption will change a federal requirement into a state requirement. Utah community water system have been preparing and delivering these Consumer Confidence Reports to their customers annually since October 1999, as required by the federal rule. This rule adoption will simply allow Utah to maintain primacy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Ph.D. Executive Director

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:
Patti Fauver or Ken Bousfield at the above address, by phone at 801-536-4196 or 801-536-4207, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at pfauver@deq.state.ut.us or kbousfie@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
R309-225. Monitoring and Water Quality: Consumer Confidence Reports.
R309-225-1. Purpose.

This rule establishes the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

R309-225-2 Authority.
R309-225-3 Definitions.
R309-225-4 General Requirements.
R309-225-5 Content of the reports.
R309-225-6 Required additional health information.
R309-225-7 Report delivery and recordkeeping.
R309-225-8 Major Sources of of Contaminants in Drinking Water.

R309-225-2. 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 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-225-3. Definitions.

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

(1) For the purpose of R309-225, customers are defined as billing units or service connections to which water is delivered by a community water system.

(2) For the purpose of R309-225, detected means: at or above the levels prescribed by R444-14-11(2).

R309-225-4. General Requirements.

(1) This rule applies only to community water systems.

(2) Effective dates.

(a) Each existing community water system must deliver its first report by October 19, 1999, its second report by July 1, 2000, and subsequent reports by July 1 annually thereafter. The first report must contain data collected during, or prior to, calendar year 1998 as prescribed in R309-225-5(4)(c). Each report thereafter must contain data collected during, or prior to, the previous calendar year.

(b) A new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter.

(c) A community water system that sells water to another community water system must deliver the applicable information required in R309-225-5 to the buyer system:

(i) no later than April 19, 1999, by April 1, 2000, and by April 1 annually thereafter or

(ii) on a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

R309-225-5. Content of the Reports.

(1) Each community water system must provide to its customers an annual report that contains the information specified in this section and R309-225-6.

(2) Information on the source of the water delivered.

(a) Each report must identify the source(s) of the water delivered by the community water system by providing information on:

(i) The type of the water: e.g., surface water, ground water; and

(ii) The commonly used name (if any) and location of the body (or bodies) of water.

(b) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the Executive Secretary, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the Executive Secretary or written by the operator.

(3) Definitions.

(a) Each report must include the following definitions:

(i) Maximum Contaminant Level Goal or MCLG: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(ii) Maximum Contaminant Level or MCL: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(b) A report for a community water system operating under a variance or an exemption issued under R309-100-10 or R309-100-11 must include the following definition: Variances and Exemptions: State or EPA permission not to meet an MCL or a treatment technique under certain conditions.

(c) A report which contains data on a contaminant that EPA regulates using any of the following terms must include the applicable definitions:

(i) Treatment Technique: A required process intended to reduce the level of a contaminant in drinking water.

(ii) Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(iii) Maximum residual disinfectant level goal or MRDLG: The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(iv) Maximum residual disinfectant level or MRDL: The highest level of a disinfectant allowed in drinking water. There is

convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(4) Information on Detected Contaminants.

(a) This sub-section specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except Cryptosporidium). It applies to:

(i) Contaminants subject to an MCL, action level, maximum residual disinfectant level, or treatment technique (regulated contaminants);

(ii) Contaminants for which monitoring is required by 40 CFR section 141.40 (unregulated contaminants); and

(iii) Disinfection by-products or microbial contaminants for which monitoring is required by R309-210, R309-215 and 40 CFR sections 141.142 and 141.143, except as provided under paragraph (e)(1) of this section, and which are detected in the finished water.

(b) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(c) The data must be derived from data collected to comply with EPA and State monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter except that:

(i) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than 5 years need be included.

(ii) Results of monitoring in compliance with federal Information Collection Rule, (40 CFR sections 141.142 and 141.143) need only be included for 5 years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(d) For detected regulated contaminants, the table(s) must contain:

(i) The MCL for that contaminant expressed as a number equal to or greater than 1.0;

(ii) The MCLG for that contaminant expressed in the same units as the MCL;

(iii) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in paragraph(3)(c) of this section;

(iv) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with the quality standards listed in R309-200 and the range of detected levels, as follows:

(A) When compliance with the MCL is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(B) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(C) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points: the average and range of detection expressed in the same units as the MCL.

(D) When rounding of results to determine compliance with the MCL is allowed by the rules, rounding should be done prior to converting the number in order to express it as a number equal to or greater than 1.0.

(v) For turbidity.

(A) When it is reported pursuant to R309-205-8 and R309-215-8(3): the highest average monthly value.

(B) When it is reported pursuant to R309-215-8(3): the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in R309-215-8(3) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(vi) For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(vii) For total coliform:

(A) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

(B) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(viii) For fecal coliform: the total number of positive samples.

(ix) The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in R309-225-8 that is most applicable to the system.

(e) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(f) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs or treatment techniques and the report must contain a clear and readily understandable explanation of the violation including: the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language in R309-220-14.

(g) For detected unregulated contaminants for which monitoring is required (except Cryptosporidium), the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(5) Information on Cryptosporidium, radon, and other contaminants.

(a) If the system has performed any monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of the federal Information Collection Rule (40 CFR section 141.143), which indicates that Cryptosporidium may be present in the source water or the finished water, the report must include:

(i) A summary of the results of the monitoring; and

(ii) An explanation of the significance of the results.

(b) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results.

(c) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, EPA strongly encourages systems to report any results which may indicate a health concern. To determine if results may indicate a health concern, EPA recommends that systems find out if EPA has proposed a regulation or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791). EPA considers detects above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, EPA recommends that the report include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(6) Compliance with UPDWR. In addition to the requirements of R309-225-5(4)(f), the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

(a) Monitoring and reporting of compliance data;

(b) Filtration and disinfection prescribed by R309-505 of this part. For systems which have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes which constitutes a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(c) Lead and copper control requirements prescribed by R309-210-6. For systems which fail to take one or more actions prescribed by R309-210-6(1)(c), R309-210-6(2), or R309-210-6(4), the report must include the applicable language in R309-220-14 for lead, copper, or both.

(d) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by R309-215-8. For systems which violate the requirements of R309-215-8, the report must include the relevant language from R309-220-14.

(e) Recordkeeping of compliance data.

(f) Special monitoring requirements prescribed by 40 CFR section 141.40 (unregulated contaminants); and

(g) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

(7) Variances and Exemptions. If a system is operating under the terms of a variance or an exemption issued under R309-100-10 or R309-100-11, the report must contain:

(a) An explanation of the reasons for the variance or exemption;

(b) The date on which the variance or exemption was issued;

(c) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(d) A notice of any opportunity for public input in the review, or renewal, of the variance or exemption.

(8) Additional information.

(a) The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language of paragraphs (8)(a)(i) through (iii) or systems may use their own comparable language. The report also must include the language of paragraph (8)(a)(iv) of this section.

(i) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(ii) Contaminants that may be present in source water include:

(A) Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

(B) Inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

(C) Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses.

(D) Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems.

(E) Radioactive contaminants, which can be naturally-occurring or be the result of oil and gas production and mining activities.

(iii) In order to ensure that tap water is safe to drink, EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(iv) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(b) The report must include the telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report.

(c) In communities with a large proportion of non-English speaking residents, as determined by the Executive Secretary, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(d) The report must include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water.

(e) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

R309-225-6. Required Additional Health Information.

(1) All reports must prominently display the following language:

Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(2) A system which detects arsenic at levels above 5 micrograms per liter, but below the MCL:

(a) Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(b) May write its own educational statement, but only in consultation with the Executive Secretary.

(3) A system which detects nitrate at levels above 5 mg/l, but below the MCL:

(a) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

(b) May write its own educational statement, but only in consultation with the Executive Secretary.

(4) Systems which detect lead above the action level in more than 5 percent, and up to and including 10 percent, of homes sampled:

(a) Must include a short informational statement about the special impact of lead on children using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

(b) May write its own educational statement, but only in consultation with the Executive Secretary.

(5) Community water systems that detect TTHM above 0.080 mg/l (milligrams per liter), but below the MCL in R309-200-5(3)(c), as an annual average, monitored and calculated under the provisions of R309-210-8, must include health effects language for TTHMs prescribed in R309-220-14.

(6) Beginning in the report due by July 1, 2002 and ending January 22, 2006, a community water system that detects arsenic above 0.01 milligrams per liter and up to and including 0.05 milligrams per liter must include the arsenic health effects language prescribed in R309-220-14.

R309-225-7. Report Delivery and Recordkeeping.

(1) Except as provided in paragraph (7) of this section, each community water system must mail or otherwise directly deliver one copy of the report to each customer.

(2) The system must make a good faith effort to reach consumers who do not get water bills, using means recommended by the Executive Secretary. EPA expects that an adequate good faith effort will be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters or workers. A good faith effort to reach consumers would include a mix of methods appropriate to the particular system such as: Posting the reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers; delivery to community organizations.

(3) No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the Executive Secretary, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Executive Secretary.

(4) No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearinghouse identified by the Executive Secretary.

(5) Each community water system must make its reports available to the public upon request.

(6) Each community water system serving 100,000 or more persons must post its current year's report to a publicly-accessible site on the Internet.

(7) The Governor has waived the requirement of paragraph (a) of this section for community water systems serving fewer than 10,000 persons.

(a) Such systems must:

(i) Publish the reports in one or more local newspapers serving the area in which the system is located;

(ii) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the Executive Secretary; and

(iii) Make the reports available to the public upon request.

(b) Systems serving 500 or fewer persons may forego the requirements of paragraphs (7)(a)(i) and (ii) of this section if they provide notice at least once per year to their customers by mail, door-to-door delivery or by posting in an appropriate location that the report is available upon request.

(8) Any system subject to this rule must retain copies of its consumer confidence report for no less than 3 years.

R309-225-8. Major Sources of Contaminants in Drinking Water.

Microbiological Contaminants

(1) Total Coliform Bacteria - Naturally present in the environment.

(2) Fecal coliform and E. coli - Human and animal fecal waste.
(3) Turbidity- Soil runoff.
(4) Total organic carbon - Naturally present in the environment.
Radioactive Contaminants
(5) Alpha emitters (pCi/l) - Erosion of natural deposits.
(6) Beta/photon emitters (mrem/yr) - Decay of natural and man-made deposits.
(7) Combined radium (pCi/l) - Erosion of natural deposits.
(8) Uranium (ug/l) - Erosion of natural deposits.
Inorganic Contaminants
(9) Antimony (ppb) - Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
(10) Arsenic (ppb) - Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.
(11) Asbestos (MFL) - Decay of asbestos cement water mains; Erosion of natural deposits.
(12) Barium (ppm) - Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.
(13) Beryllium (ppb) - Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries.
(14) Cadmium (ppb) - Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; runoff from waste batteries and paints.
(15) Chromium (ppb) - Discharge from steel and pulp mills; Erosion of natural deposits.
(16) Copper (ppm) - Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives.
(17) Cyanide (ppb) - Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.
(18) Fluoride (ppm) - Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories.
(19) Lead (ppb) - Corrosion of household plumbing systems; Erosion of natural deposits.
(20) Mercury (inorganic) (ppb) - Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.
(21) Nitrate (as Nitrogen) (ppm) - Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
(22) Nitrite (as Nitrogen) (ppm) - Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
(23) Selenium (ppb) - Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.
(24) Thallium (ppb) - Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.
Synthetic Organic Contaminants including Pesticides and Herbicides
(25) 2,4-D (ppb) - Runoff from herbicide used on row crops.
(26) 2,4,5-TP (Silvex)(ppb) - Residue of banned herbicide.
(27) Acrylamide - Added to water during sewage/wastewater treatment.
(28) Alachlor (ppb) - Runoff from herbicide used on row crops.
(29) Atrazine (ppb) - Runoff from herbicide used on row crops.
(30) Benzo(a)pyrene (PAH) (nanograms/l) -Leaching from linings of water storage tanks and distribution lines.
(31) Carbofuran (ppb) - Leaching of soil fumigant used on rice and alfalfa.
(32) Chlordane (ppb) - Residue of banned termiticide.
(33) Dalapon (ppb) - Runoff from herbicide used on rights of way.
(34) Di(2-ethylhexyl) adipate (ppb) - Discharge from chemical factories.
(35) Di(2-ethylhexyl) phthalate (ppb) - Discharge from rubber and chemical factories.
(36) Dibromochloropropane (ppt) - Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
(37) Dinoseb (ppb) - Runoff from herbicide used on soybeans and vegetables.
(38) Diquat (ppb) - Runoff from herbicide use.
(39) Dioxin (2,3,7,8-TCDD) (ppq) - Emissions from waste incineration and other combustion; Discharge from chemical factories.
(40) Endothall (ppb) - Runoff from herbicide use.
(41) Endrin (ppb) - Residue of banned insecticide.
(42) Epichlorohydrin - Discharge from industrial chemical factories; An impurity of some water treatment chemicals.
(43) Ethylene dibromide (ppt) - Discharge from petroleum refineries.
(44) Glyphosate (ppb) - Runoff from herbicide use.
(45) Heptachlor (ppt) - Residue of banned pesticide.
(46) Heptachlor epoxide (ppt) - Breakdown of heptachlor.
(47) Hexachlorobenzene (ppb) - Discharge from metal refineries and agricultural chemical factories.
(48) Hexachlorocyclopentadiene (ppb) - Discharge from chemical factories.
(49) Lindane (ppt) - Runoff/leaching from insecticide used on cattle, lumber, gardens.
(50) Methoxychlor (ppb) - Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
(51) Oxamyl (Vydate)(ppb) - Runoff/leaching from insecticide used on apples, potatoes and tomatoes.
(52) PCBs (Polychlorinated biphenyls) (ppt) - Runoff from landfills; Discharge of waste chemicals.
(53) Pentachlorophenol (ppb) - Discharge from wood preserving factories.
(54) Picloram (ppb) - Herbicide runoff.
(55) Simazine (ppb) - Herbicide runoff.
(56) Toxaphene (ppb) - Runoff/leaching from insecticide used on cotton and cattle.
Volatile Organic Contaminants
(57) Benzene (ppb) - Discharge from factories; Leaching from gas storage tanks and landfills.
(58) Bromate (ppb) - By-product of drinking water chlorination.
(59) Carbon tetrachloride (ppb) - Discharge from chemical plants and other industrial activities.
(60) Chloramines (ppm) - Water additive used to control microbes.
(61) Chlorine (ppm) - Water additive used to control microbes.
(62) Chlorite (ppm) - By-product of drinking water chlorination.
(63) Chlorine dioxide (ppb) - Water additive used to control microbes.
(64) Chlorobenzene (ppb) - Discharge from chemical and agricultural chemical factories.
(65) o-Dichlorobenzene (ppb) - Discharge from industrial chemical factories.

(66) p-Dichlorobenzene (ppb) - Discharge from industrial chemical factories.
(67) 1,2-Dichloroethane (ppb) - Discharge from industrial chemical factories.
(68) 1,1-Dichloroethylene (ppb) - Discharge from industrial chemical factories.
(69) cis-1,2-Dichloroethylene (ppb) - Discharge from industrial chemical factories.
(70) trans-1,2-Dichloroethylene (ppb) - Discharge from industrial chemical factories.
(71) Dichloromethane (ppb) - Discharge from pharmaceutical and chemical factories.
(72) 1,2-Dichloropropane (ppb) - Discharge from industrial chemical factories.
(73) Ethylbenzene (ppb) - Discharge from petroleum refineries.
(74) Haloacetic Acids (HAA) (ppb) - By-product of drinking water disinfection.
(75) Styrene (ppb)- Discharge from rubber and plastic factories; Leaching from landfills.
(76) Tetrachloroethylene (ppb) - Discharge from factories and dry cleaners.
(77) 1,2,4-Trichlorobenzene (ppb) - Discharge from textile-finishing factories.
(78) 1,1,1-Trichloroethane (ppb) - Discharge from metal degreasing sites and other factories.
(79) 1,1,2-Trichloroethane (ppb) - Discharge from industrial chemical factories.
(80) Trichloroethylene (ppb) - Discharge from metal degreasing sites and other factories.
(81) TTHMs (Total trihalomethanes)(ppb) - By-product of drinking water chlorination.
(82) Toluene (ppm) - Discharge from petroleum factories.
(83) Vinyl Chloride (ppb) - Leaching from PVC piping; Discharge from plastics factories.
(84) Xylenes (ppm) - Discharge from petroleum factories; Discharge from chemical factories.

KEY: drinking water, consumer confidence report, water quality
August 12, 2002
19-4-104
63-46b-4

▼ ▼

Environmental Quality, Radiation Control
R313-70-7
License Categories and Types of Fees for Radioactive Materials Licenses

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24969
FILED: 06/14/2002, 10:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add new license categories and types of fees in Subsections R313-70-7(2)(b), and (c) reflecting the new rule, Rule R313-24, Uranium Mills, and Source Material Mill Tailings Disposal Facility Requirements and maintain rules which are compatible with 10 CFR 40. (DAR Note: Rule R313-24 was published in the May 15, 2002, issue of the Utah State Bulletin, beginning on page 23.)

SUMMARY OF THE RULE OR CHANGE: The rule change adds two license categories to Subsections R313-70-7(2)(b)and (c) as follows: in Subsection R315-70-7(2)(b), licenses for possession and use of source material in extraction facilities such as conventional milling, in situ leaching, heap leaching, and other processes including licenses authorizing the possession of byproduct (tailings and other wastes) from source material extraction facilities, as well as licenses authorizing the possession and maintenance of a facility in a standby mode and licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations; and in Subsection R317-70-7(2)(c), licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession
and disposal.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-103.5, 19-3-104, and 19-3-108

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since there is a transfer of regulatory authority from federal to state government, there will be a savings impact through the collection of annual and review fees from licensees. The fees approved by the 2002 Utah legislature contained within the Department of Environmental Quality (DEQ) fee schedule set the amounts of fees from $0 to $80,000 year for closing, on standby, or operating facilities and a $70/hour review fee. In comparison, the recently approved Nuclear Regulatory Commission (NRC) fees are approximately $78,000 annual fee with a $152/hour review fee. Licensees will realize savings from the hourly review fee difference. The fees have been set to collect actual state program costs.
❖ LOCAL GOVERNMENTS: Local governments are not subject to the provisions of the rule, because no local governments in Utah have uranium recovery radioactive material licenses.
❖ OTHER PERSONS: There will be a cost impact associated with this rule change. Licensees will pay annual and review fees. Annual fees vary from $0 to $80,000 per year depending on if the facility is closing, on standby, or operating. An hourly review fee of $70 per hour will be charged.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be annual and review fees cost associated with this rule change. Fees are set by the legislature within the DEQ fee schedule and during the 2002 legislative session, annual fees from $0 to $80,000/year were set for closing, on standby, or operating facilities with an hourly review fee of $70/hour. The fees were

established to be paid on a monthly basis starting in January 2003 and legislation was crafted such as to avoid licensees from having to pay duplicative fees to the State and the NRC (except for 3 months of startup costs). For the first year, the fees were established through the passage of SB96 during the 2002 legislative session. (DAR Note: S.B. 96 is found at UT L 2002 Ch 297, and was effective May 6, 2002.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is an annual fee for business that possess radioactive material in license category R313-70-7(2)(b)or (c). There is a per hour review fee authorized in the DEQ fee schedule.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cjones@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 09/10/2002

AUTHORIZED BY: William Sinclair, Director

R313. Environmental Quality, Radiation Control.
R313-70. Payments, Categories and Types of Fees.
R313-70-7. License Categories and Types of Fees for Radioactive Materials Licenses.

Fees shall be established in accordance with the Legislative Appropriations Act. Copies of established fee schedules may be obtained from the Executive Secretary.

TABLE

LICENSE CATEGORY	TYPE OF FEE
(1) Special Nuclear Material	
(a) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers and neutron generators.	New License or Renewal Annual Fee
(b) Licenses for possession and use of less than 15 g special nuclear material in unsealed form for research and development.	New License or Renewal Annual Fee
(c) All other special nuclear material licenses.	New License or Renewal Annual Fee
(d) Special nuclear material to be used as calibration and reference sources.	New License or Renewal Annual Fee
(2) Source Material.	
(a) Licenses for concentrations of uranium from other areas like copper or phosphates for the production of moist, solid, uranium yellow cake.	New License or Renewal Annual Fee
(b) Licenses for possession and use of source material in [~~recovery operations~~] extraction facilities such as [~~milling, in-situ leaching, heap leaching, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium,~~]conventional milling, in-situ leaching, heap leaching, and other processes including licenses authorizing the possession of byproduct [~~waste~~]material (tailings and other wastes) from source material [~~recovery operations~~]extraction facilities, as well as licenses authorizing the possession and maintenance of a facility in a standby mode[~~.~~], and	Annual Fee
[~~(c) Licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal.~~	~~Annual Fee~~
~~(d) L~~] licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations.	[~~Annual Fee~~]
(c) Licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal.	Annual Fee

[~~(e)~~](d) Licenses for possession and use of source material for shielding.	New License or Renewal Annual Fee	
[~~(f)~~](e) All other source material licenses.	New License or Renewal Annual Fee	
(3) Radioactive Material Other than Source Material and Special Nuclear Material.		
(a)(i) Licenses of broad scope for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.	New License or Renewal Annual Fee	
(a)(ii) Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.	New License or Renewal Annual Fee	
(b) Licenses authorizing the processing or manufacturing and distribution or redistribution of radio-pharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material.	New License or Renewal Annual Fee	
(c) Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material.	New License or Renewal Annual Fee	
(d) Licenses for possession and use of radioactive material for industrial radiography operations.	New License or Renewal Annual Fee	
(e) Licenses for possession and use of sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	New License or Renewal Annual Fee	
(f)(i) Licenses for possession and use of less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	New License or Renewal Annual Fee	
(f)(ii) Licenses for possession and use of 10,000 curies or more of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	New License or Renewal Annual Fee	
(g) Licenses to distribute items containing radioactive material that require device review to persons exempt from the licensing requirements of R313-19, except specific licenses authorizing redistribution of items that have have been authorized for distribution to persons exempt from the licensing requirements of R313-19.	New License or Renewal Annual Fee	
(h) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require device evaluation to persons exempt from the licensing requirements of R313-19, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of R313-19.	New License or Renewal Annual Fee	
(i) Licenses to distribute items containing radio-active material that require sealed source or device review to persons generally licensed under R313-21, except specific licenses authorizing	New License or Renewal Annual Fee	

redistribution of items that have been authorized for distribution to persons generally licensed under R313-21.		
(j) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require sealed source or device review to persons generally licensed under R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under R313-21.	New License or Renewal Annual Fee	
(k) Licenses for possession and use of radioactive material for research and development, which do not authorize commercial distribution.	New License or Renewal Annual Fee	
(l) All other specific radioactive material licenses.	New License or Renewal Annual Fee	
(m) Licenses of broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution.	New License or Renewal	
(n) Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services which are subject to the fees specified for the listed services.	New License or Renewal Annual Fee	
(o) Licenses that authorize services for leak testing only.	New License or Renewal Annual Fee	
(4) Radioactive Waste Disposal:		
(a) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee.	Application Fee New License or Renewal	
(b) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	New License or Renewal Annual Fee	
(c) Licenses specifically authorizing the receipt of prepackaged waste radioactive material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	New License or Renewal Annual Fee	
(d) Licenses authorizing packaging of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material.	New License or Renewal Annual Fee	
(5) Well logging, well surveys and tracer studies.		
(a) Licenses for possession and use of radioactive material for well logging, well surveys and tracer studies other than field flooding tracer studies.	New License or Renewal Annual Fee	
(b) Licenses for possession and use of radioactive material for field flooding tracer studies.	New License or Renewal Annual Fee	
(6) Nuclear laundries.		
(a) Licenses for commercial collection and laundry of items contaminated with radioactive material.	New License or Renewal Annual Fee	
(7) Human use of radioactive material.		

(a) Licenses for human use of radioactive material in sealed sources contained in teletherapy devices.	New License or Renewal Annual Fee
(b) Other licenses issued for human use of radioactive material, except licenses for use of radioactive material contained in teletherapy devices.	New License or Renewal Annual Fee
(c) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of radioactive material, except licenses for radio-active material in sealed sources contained in teletherapy devices.	New License or Renewal Annual Fee
(8) Civil Defense.	
(a) Licenses for possession and use of radioactive material for civil defense activities.	New License or Renewal Annual Fee
(9) Power Source.	
(a) Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power.	New License or Renewal Annual Fee
(10) General License.	
(a) Measuring, gauging and control devices as described in R313-21-22(4), other than hydrogen-3 (tritium) devices and polonium-210 devices containing no more than 10 millicuries used for producing light or an ionized atmosphere.	Fee per registration certificate
(b) In Vitro testing	Fee per registration certificate
(c) Depleted uranium	Fee per registration certificate
(d) Reciprocal recognition, as provided for in R313-19-30, of a license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.	Annual fee for license category listed in R313-70-7(1) through (10), per 180 days in one calendar year

KEY: radioactive materials, x-rays, registration, fees
[~~August 13, 1999~~]2002
Notice of Continuation October 10, 2001
19-3-104~~(4)~~(6)

Environmental Quality, Solid and Hazardous Waste
R315-1-1
Hazardous Waste Definitions and References

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24963
FILED: 06/14/2002, 09:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: The proposed rule change incorporates changes related to the definitions of "Corrective action management unit" (CAMU) and "Remediation waste" in order to be consistent with recent similar changes made by the EPA to 40 CFR 260.10 on January 22, 2002, (67 FR 2962) and subsequently became effective on April 22, 2002. Specifically, the proposed rule change removes the definition of CAMU and revises the definition of "Remediation waste." This rule change also revises the definition of CAMU as found at 40 CFR 270.2 by substituting the definition of CAMU that is found at 40 CFR 260.10, 2000 ed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 67 FR 2962, January 22, 2002; 40 CFR 270.2, 1999 ed.; and 40 CFR 260.10, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule

change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Diane R. Nielson, Ph. D.

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:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10 and 279.1, 2000 ed., as amended by 67 FR 2962, January 22, 2002, are adopted and incorporated by reference with the following revisions:

(1) Substitute "Executive Secretary" for "Regional Administrator" or "Administrator," except in the following cases:

. . . . . .

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act; [~~and~~]

(2) "Director" or "State Director" means "Executive Secretary[~~-~~]," and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

. . . . . .

KEY: hazardous waste
[~~April 20, 2001~~]2002
Notice of Continuation October 18, 2001
19-6-105
19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-2
General Requirements - Identification and Listing of Hazardous Waste

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24964
FILED: 06/14/2002, 09:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule change is to revise some provisions to make them consistent with corresponding federal regulations.

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes eliminate an effective date that is no longer relevant, lists specifically what state rules are incorporating portions of 40 CFR, and deletes the listing of the listed waste U408 which is consistent with federal rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 261.33(f), 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Diane R. Nielson, Ph.D.

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:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-2. Definition of Solid Waste.

. . . . . .

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section.[~~ Table 1 of 40 CFR 261.2, 1997 ed., is adopted and incorporated by reference and shall be effective through June 30, 1999.~~] Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for Column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(1[~~6~~]7) for mineral processing secondary materials)[~~, and shall be effective July 1, 1999~~].

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in Column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in Column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in Column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(1[~~6~~]7), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in Column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

. . . . . .

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

. . . . . .

(17) Secondary materials, i.e., sludges, by-products, and spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, [~~and~~]2-11, and 2-26 (which incorporate[~~s~~] by reference 40 CFR 261 Subpart D), and R35-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

. . . . . .

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

. . . . . .

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

. . . . . .

(f) The listing of chemicals, found in 40 CFR 261.33(f), [~~1998~~]2000 ed., is adopted and incorporated by reference.

KEY: hazardous waste
[~~September 4, 2001~~]2002
Notice of Continuation October 18, 2001

19-6-105
19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-7
Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24965
FILED: 06/14/2002, 09:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Make the rule consistent with federal regulations and with other state rules.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change eliminates a sentence not found in corresponding federal regulations and makes corrections and clarifications to the incorporation by reference of financial requirements from 40 CFR 265.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 265 subpart H

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Diane R. Nielson, Ph.D.

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:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-7-8. General Interim Status Requirements.

8.1 PURPOSE, SCOPE, APPLICABILITY

(a) The purpose of R315-7 is to establish minimum State of Utah standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in R315-7-30, which incorporates by reference 40 CFR 265.1080(b), the standards of R315-7 and of R315-8-21, which incorporates by reference 40 CFR 264.552 through 264.554, apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements of interim status under State or Federal requirements and R315-3-2.1 until either a permit is issued under R315-3 or until applicable R315-7 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA or failed to file part A of the permit application as required by R315-3-2.1(d) and (f). These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in R315-7 or R315-2.[~~—R315-7 also applies to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in R315-7-8.1(a).~~]

(c) The requirements of R315-7 do not apply to the following:

. . . . . .

(11) Universal waste handlers and universal waste transporters (as defined in R315-16-1.[~~7~~]9) handling the wastes listed below. These handlers are subject to regulation under section R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;
(ii) Pesticides as described in R315-16-1.3;
(iii) Mercury thermostats as described in R315-16-1.4; and
(iv) Mercury lamps as described in R315-16-1.[~~6~~]5

. . . . . .

R315-7-15. Financial Requirements.

The requirements as found in 40 CFR 265 subpart H (265.140 - 265.150), 1998 ed., as amended by 63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) [~~S~~]substitute "[~~Board~~]Executive Secretary" for all references to "Administrator" or "Regional Administrator."

(b) [~~S~~]substitute "Board" for all references to "Agency" or "EPA".

(c) [~~S~~]substitute [~~19-6~~]"The Utah Solid and Hazardous Waste Act" for all references to [~~Sections of RCRA.~~]"the Resource Conservation and Recovery Act" or "RCRA."

KEY: hazardous waste
[~~June 15, 2001~~]2002
Notice of Continuation October 18, 2001
19-6-105
19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-8
Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24962
FILED: 06/14/2002, 09:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with EPA rules and retain authorization and make rules consistent with other state rules.

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes makes corrections and clarifications to the incorporation by reference of closure and post closure and financial requirements from 40 CFR 264, and it incorporates recent changes made to the federal regulations regarding corrective action for solid waste management units.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 67 FR 2962, January 22, 2002

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Diane R. Nielson, Ph. D.

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:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-8-1. Purpose, Scope and Applicability.

(a) The purpose of R315-8 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

. . . . . .

(g) The requirements of R315-8-2 through 8-4 and R315-8-6.12 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, R315-8-2

through 8-4 and R315-8-6.12 do apply to the facility subject to the traditional hazardous waste permit). Instead of the requirements of R315-8-2 through 8-4, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Division of Solid and Hazardous Waste using EPA Form 8700-12;

. . . . . .

(12) Develop, maintain and implement a plan to meet the requirements in R315-8-1[~~.1~~](g)(2) through (g)(6) and R315-8-1[~~.1~~](g)(9) through (g)(10); and

(13) Maintain records documenting compliance with R315-8-1[~~.1~~](g)(1) through (g)(12).

1.[~~2~~]1 RELATIONSHIP TO INTERIM STATUS STANDARDS

A facility owner or operator who has fully complied with the requirements for interim status--as defined in section 3005(e) of the Federal RCRA Act and regulations under R315-3-7.1 shall comply with the regulations specified in R315-7 in lieu of R315-8, until final administrative disposition of his permit application is made, except as provided under R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553.

R315-8-7. Closure and Post Closure.

The requirements as found in 40 CFR subpart G, 264.110 - 264.120, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

([~~1~~]a) [~~S~~]substitute "Board" for all [~~federal regulation~~]references made to "Regional Administrator" except in 264.112 where "Regional Administrator" and "Director" means "Executive Secretary".

([~~2~~]b) [~~S~~]substitute R315-3 for all general reference made to 40 CFR 124 and 270.

([~~3~~]c) [~~S~~]substitute [~~19-6-101 et seq.~~]"The Utah Solid and Hazardous Waste Act" for all references made to [~~RCRA.~~]the "Resource Conservation and Recovery Act" or "RCRA."

R315-8-8. Financial Requirements.

The requirements as found in 40 CFR subpart H, 264.140 - 264.151, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

([~~1~~]a) [~~S~~]substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator".

(b) substitute "Board" for all references to "Agency" or "EPA."

([~~2~~]c) [~~S~~]substitute [~~19-6~~] "The Utah Solid and Hazardous Waste Act" for all references to [~~RCRA.~~] the "Resource Conservation and Recovery Act" or "RCRA."

R315-8-21. Corrective Action for Solid Waste Management Units.

The requirements of 40 CFR 264, subpart S, which includes sections 264.55[~~2~~]0 through 264.55[4]5, 2000 ed., as amended by 67 FR 2962, January 22, 2002, are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste
[~~June 15, 2001~~]2002
Notice of Continuation October 18, 2001

19-6-105
19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-13-1
Land Disposal Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24967
FILED: 06/14/2002, 09:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Eliminates a sentence that has become redundant due to recent federal rule changes.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change eliminates Subsection R315-13-1(d). The exemption for mercury-containing wastes is now included in the incorporation by reference of 40 CFR 268, 2000 ed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Diane R. Nielson, Ph. D.

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:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-13. Land Disposal Restrictions.
R315-13-1. Land Disposal Restrictions.

The requirements as found in 40 CFR 268, 2000 ed., are adopted and incorporated by reference including Appendices IV, VI, VII, VIII, IX, and XI, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44(a) - (g) and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).

(b) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(c) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.[

~~(d) The universal wastes listed at 40 CFR 268.1(f) are exempted from the requirements under 40 CFR 268.7 and 268.50, including mercury-containing wastes, as described in R315-16-1.6.~~]

KEY: hazardous waste
[~~April 20, 2001~~]2002
Notice of Continuation October 5, 2001
19-6-106
19-6-105

▼ ▼

Environmental Quality, Solid and Hazardous Waste
R315-16
Standards for Universal Waste Management

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24966
FILED: 06/14/2002, 09:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Make the state rule consistent with corresponding federal regulations which is necessary for authorization equivalency.

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes add language to the requirements for large quantity handlers of universal waste lamps that was missing from state rules but found in corresponding federal requirements, and it clarifies which parts of the state rules are incorporating by reference corresponding federal regulations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖ OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Diane R. Nielson, Ph. D.

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:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/2002

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-16. Standards for Universal Waste Management.
R315-16-3. Standards for Large Quantity Handlers of Universal Waste.

. . . . . .

3.4 WASTE MANAGEMENT

. . . . . .

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1)(i) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

. . . . . .

R315-16-7. Petitions to Include Other Wastes Under R315-16.

. . . . . .

7.2 FACTORS FOR PETITIONS TO INCLUDE OTHER WASTES UNDER R315-16

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, [~~of these rules,~~]or if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in R315-2-9. When a characteristic waste is added to the universal waste regulations of R315-16 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in section 16-1.9 will be amended to include only the hazardous waste portion of the waste category, e.g., hazardous waste batteries. Thus, only the portion of the waste stream that does exhibit one or more characteristics, i.e., is hazardous waste, is subject to the universal waste regulations of R315-16;

. . . . . .

KEY: hazardous waste
[~~April 20, 2001~~]2002
Notice of Continuation September 15, 2000
19-6-105
19-6-106

Health, Center for Health Data, Health Care Statistics

R428-2

Health Data Authority Standards for Health Data

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24957
FILED: 06/13/2002, 15:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking corrects a statutory reference and reduces the penalties that may be imposed by the Department for violation of the rule.

SUMMARY OF THE RULE OR CHANGE: This rulemaking corrects a statutory reference (from Section 26-33a-7 to Section 26-1-7) and reduces the penalties that may be imposed by the Department for violation of the rule. These are: an administrative civil penalty not to exceed $3,000 for the first violation and up to $5,000 for subsequent similar violations within two years; and possible court-imposed civil or criminal penalties not to exceed $5,000 or a class B misdemeanor for first violations, and a class A misdemeanor for any subsequent similar violation withing two years.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This minor change correcting a statutory reference has no impact on the state budget. In addition, while penalties have changed, the department's actions in ddiscovering violations and assessing penalties will not change.

❖ LOCAL GOVERNMENTS: Local governmental entities that are data suppliers under this rule will not experience any costs or savings because of the correction of a statutory reference. The cost or savings because of the reduction in the possible penalties is difficult to estimate inasmuch as the Department has never imposed penalties under this rule.

❖ OTHER PERSONS: Data suppliers under this rule will not experience any costs or savings because of the correction of a statutory reference. The cost or savings because of the reduction in the possible penalties is difficult to estimate inasmuch as the Department has never imposed penalties under this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A data supplier under this rule will not experience any costs because of the correction of a statutory reference. The cost or savings because of the reduction in the possible penalties is difficult to estimate inasmuch as the Department has never imposed penalties under this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The correction of the statutory reference has no impact. Reducing the possible fine for failure to comply with the rule has the potential of a positive impact on business, although no fine has ever been imposed for a violation of the rule. Rod L. Betit

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:
Wu Xu at the above address, by phone at 801-538-7072, by FAX at 801-538-6694, or by Internet E-mail at wxu@doh.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Rod Betit, Executive Director

R428. Health, Center for Health Data, Health Care Statistics.
R428-2. Health Data Authority Standards for Health Data.

. . . . . .

R428-2-3. Definitions.

The following definitions apply to all of R428.

A. "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

B. "Committee" means the Utah Health Data Committee created by Section [~~26-33a-7~~]26-1-7.

. . . . . .

R428-2-10. [~~Penalty for Failure to Provide Data~~]Penalties.

[~~If a data supplier fails to meet the requirements of rules R428-1 through R428-20, the committee shall order the data supplier to provide the data. Failure to comply with the order may result in the imposition of penalties as provided in the Utah Health Data Authority Act, Section 26-33a-113.~~]Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $3,000 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health, [~~health policy, health planning~~]data standard, disclosure
[~~1991~~]2002
Notice of Continuation December 23, 1997
26-33a-104

▼ ▼

Health, Center for Health Data, Health Care Statistics
R428-12
Health Data Authority Survey of Enrollees in Health Maintenance Organizations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24955
FILED: 06/13/2002, 15:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: IHC Health Plans and Altius Health Plans expressed interest, in 2001, in using Utah Health Data Committee's (HDC) data if this rule were revised to follow the data collection methods standardized by the National Committee for Quality Assurance (NCQA). These two Health Maintenance Organizations (HMOs) proposed that the Department of Health conduct the survey of all Medicaid and commercial HMOs using the exact NCQA protocols so that HMOs can, if desired, use the data for their NCQA accreditation. This proposal was accepted by the HDC HMO technical advisory committee, including representatives from Medicaid Program, UnitedHealthCare, Regence BlueCross BlueShield, Molina/AFC, CIGNA, University of Utah Health Network, and IHC and Altius. The advisory committee also proposed the revisions of the rule. The HDC has reviewed the proposed revisions and requested to revise the rule as proposed by the advisory committee. The revisions will ensure that the data collection methods are consistent with guidelines outlined by the NCQA. This will expand the utility of the data and make Utah's Consumer Assesment of Health Plans (CAHPS) data comparable to national data.

SUMMARY OF THE RULE OR CHANGE: This rulemaking changes specifications for survey data collection to be consistent with the guidelines published by NCQA, changes the sample frame file layout to be consistent with the NCQA's definition of the survey year, and reduces the penalties that the Department may impose for a violation of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The State Medicaid Program may save $73,000 because they will not be required to conduct their own survey.

❖ LOCAL GOVERNMENTS: Local governments do not operate HMOs and are not affected by this rule and will not experience any costs or savings.
❖ OTHER PERSONS: Because health plans do not need to conduct separate surveys, each will save an average of $18,000. For the seven HMOs subject to this rule, the total savings is estimated to be $126,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will impose no incremental compliance costs on any affected person. By modifying the format of the data collection to be consistent with the NCQA guidelines, affected persons will no longer be required to undertake their own data collection to maintain accreditation with NCQA.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have a positive impact on business by allowing them to use information collected by the Department to meet NCQA accreditation requirements. Rod L. Betit

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:
Wu Xu at the above address, by phone at 801-538-7072, by FAX at 801-538-6694, or by Internet E-mail at wxu@doh.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Rod Betit, Executive Director

R428. Health, Center for Health Data, Health Care Statistics.
R428-12. Health Data Authority Survey of Enrollees in Health Maintenance Organizations.

. . . . . .

R428-12-3. Definitions.

These definitions apply to rule R428-12:

(1) "Office" as defined in R428-2-3A.

(2) "Health Maintenance Organization"(HMO) means any person licensed under Title 31A, Chapter 8.

(3) "Enrollee" means any individual who has entered into a contract with a health maintenance organization for health care or on whose behalf such an arrangement has been made.

(4) "Eligible Enrollee" means an enrollee who meets the following criteria:

(a) enrolled in the HMO as of [~~May~~]January 1, [~~1997~~]of the year when the survey is conducted;

(b) continuously enrolled in the HMO for at least twelve months for commercial HMOs and six months for Medicaid HMOs prior to [~~May~~]January 1 of the [~~current~~]survey year, allowing one break in coverage for up to 45 days;

(c) not employed by the HMO, except that HMOs can choose to survey their employees, in which case a flag needs to be included in the sample frame so that they can be identified;

(d) [~~age 18 or older;~~

~~(e) not enrolled in Medicaid or Medicare; and~~

~~(f)~~]has Utah zip code, except that HMOs can choose to survey their enrollees residing outside of Utah, in which case a flag needs to be included in the sample frame so that they can be identified; and

(e) Medicare is not the enrollee's primary payer.

(5) "Employee" means any person employed by a health plan or HMO.

(6) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

([~~5~~]7) "Sampling Frame" means the HMO enrollment file as described in [~~Table 1~~]HEDIS 2002, Volume 3, Specifications for Survey Measures published by NCQA, which is incorporated by reference, for all eligible enrollees of the HMO. The sampling frame includes only records that meet the eligibility criteria in R428-12-3(4).

([~~6~~]8) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the HMO's sampling frame.

([~~7~~]9) "Aggregate statistics" means the total number of enrollees in the particular HMO by age and sex.

([~~8~~]10) "Survey agency" means an independent contractor on contract with the Office of Health [~~Data Analysis~~]Care Statistics.

R428-12-4. Creating the Sampling Frame.

(1) The sources for enrollment data are [~~Health Maintenance Organizations (~~]HMOs[~~)~~] licensed in Utah. Each HMO shall include in the sampling frame all eligible enrollees. The HMO may not exclude any record except those that do not meet eligibility criteria as specified in R428-12-3(4).

(2) Each HMO shall create the sampling frame according to the format [~~in the Table 1~~]specified by HEDIS 2002, Volume 3, Specifications for Survey Measures published by NCQA.[

~~(3) The layout described in Table 1 shall be followed exactly. Column starts or widths of fields shall not be changed. The sample file must be in ASCII format, one member record per line, all records the same length. Records shall not contain quotes, hyphens in phone numbers, dashes, or any other punctuation.~~

~~TABLE 1~~
~~SAMPLING FRAME LAYOUT~~

~~FIELD~~	~~STARTING COLUMN~~	~~WIDTH~~	~~TYPE~~
~~Filler (blanks)~~	~~1~~	~~5~~	~~N/A~~
~~Member Last Name~~	~~6~~	~~30~~	~~Alpha~~
~~First Name~~	~~36~~	~~30~~	~~Alpha~~
~~Street1~~	~~66~~	~~30~~	~~Alpha~~
~~Street2~~	~~96~~	~~20~~	~~Alpha~~
~~City~~	~~116~~	~~20~~	~~Alpha~~
~~State~~	~~136~~	~~2~~	~~Alpha~~
~~Zip~~	~~138~~	~~5~~	~~Numeric~~

~~Telephone~~	~~143~~	~~10~~	~~Numeric~~
~~Member's Birth Date~~	~~153~~	~~6~~	~~Numeric~~
~~Member's Employer~~	~~159~~	~~50~~	~~Alpha~~
~~Contract Holder #~~	~~209~~	~~10~~	~~Numeric~~
~~Gender~~	~~219~~	~~1~~	~~Alpha~~
~~Date of Enrollment~~	~~220~~	~~6~~	~~Numeric~~
~~HMO Employee Indicator~~	~~226~~	~~1~~	~~Numeric~~
~~Medicare/Medicaid Flag~~	~~227~~	~~1~~	~~Numeric~~

~~(4) Telephone shall have the format XXXxxxxxxx and must include area code. Gender shall have a value of "M" if the enrollee is male, and "F" if the enrollee is female. Dates shall have the format MMDDYY. Date of enrollment for enrollees who have had a break in coverage within the prior twelve months shall be submitted as the date of initial enrollment. The HMO Employee Indicator shall have a value of 1 if the enrollee is employed by the HMO, and 0 otherwise. The Medicare/Medicaid Flag shall have a value of 1 if the enrollee is enrolled in Medicare or Medicaid program, and 0 otherwise.~~

~~(5)~](3) The sampling frame and procedures used by the reporting HMO are subject to audit by the Office of Health [~~Data Analysis~~]Care Statistics and by an NCQA certified auditor against aggregate statistics for the [~~submitting~~]reporting HMO.

R428-12-5. Sampling Frame Submission.

(1) [~~The HMO shall create the sampling frame according to the eligibility criteria in R428-12-3(4). ~~]The HMO shall copy the sampling frame [~~(formatted as described in "Sampling Frame Layout" in Table 1) ~~]onto [~~an IBM PC 3.5 inch high density diskette ~~]an electronic medium acceptable to the survey agencyand send it to the survey agency. If the HMO submits the sampling frame electronically, the HMO must encrypt and password protect the file.

(2) The HMO shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the diskette or other electronic file. Each HMO shall submit to the survey agency the sampling frame for [~~each of ~~]its HMO products no later than[~~four weeks after the receipt of the sampling memo from~~] the due date assigned by the survey agency.

R428-12-6. Submission of Aggregate Statistics.

The HMO shall submit to the Office of Health [~~Data Analysis ~~]Care Statistics aggregate statistics from its total enrollment population, before screening to identify eligible enrollees, in the following format:

TABLE 2

For adult surveys:

Age	Male	Female
[~~0-17~~	~~xxxxx~~	~~xxxxx~~]
18-24	xxxxx	xxxxx
25-36	xxxxx	xxxxx
37-44	xxxxx	xxxxx
45-54	xxxxx	xxxxx
55-64	xxxxx	xxxxx
65-up	xxxxx	xxxxx

For child surveys:

<1	xxxxx	xxxxx
1-3	xxxxx	xxxxx
4-7	xxxxx	xxxxx
8-12	xxxxx	xxxxx
13-17	xxxxx	xxxxx

R428-12-7. Administration of Survey.

Each year, the Utah Department of Health, in consultation with health plans, will determine the target survey population and the scope of the survey.

R428-12-8. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $3,000 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health maintenance organization, performance measurement, health care quality
[~~July 18, 1997~~]2002
26-33a-104
26-33a-108

▼ ▼

Health, Center for Health Data, Health Care Statistics

R428-13

Health Data Authority Audit and Reporting of HMO Performance Measures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24956
FILED: 06/13/2002, 15:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking updates Rule R428-13 to ensure that data definitions and data submission dates are consistent with guidelines outlined by the National Committee for Quality Assurance (NCQA). The changes will improve the data quality and timely release of the statewide data to policy makers, Medicaid Programs, health plans, and the public.

SUMMARY OF THE RULE OR CHANGE: This rulemaking clarifies the Health Plan Employer Data and Information Set (HEDIS) reporting requirements according to the guidelines published by the NCQA, changes the data submission date according to the NCQA's guidelines, allows health plans to employ the NCQA rotation strategy for reporting HEDIS measures, and adds a penalty section as required by the Rulemaking Act (see Subsection 63-46a-3(5)).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The change will improve the quality of the data that the state receives, but will not change the cost of collecting or analyzing the data and therefore will not cause any cost or savings to the state.
❖ LOCAL GOVERNMENTS: This rule does not apply to local governments and will not cause a cost or savings for them.
❖ OTHER PERSONS: Health plans may save half of their data collection costs if they use the rotation strategy for reporting HEDIS measures. There should be no additional costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A health plan may save half of its data collection costs if it uses the rotation strategy for reporting HEDIS measures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By allowing health plans to report less frequently, consistent with the NCQA rotation strategy, this rule will have a positive fiscal impact on businesses. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:
Wu Xu at the above address, by phone at 801-538-7072, by FAX at 801-538-6694, or by Internet E-mail at wxu@doh.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Rod Betit, Executive Director

R428. Health, Center for Health Data, Health Care Statistics.
R428-13. Health Data Authority. Audit and Reporting of HMO Performance Measures.

. . . . . .

R428-13-3. Definitions.

These definitions apply to rule R428-13:

(1) "Office" as defined in R428-2-3A.

(2) "Health Maintenance Organization (HMO)" means any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code.

(3) "Health plan" means any insurer under a contract with the Utah Department of Health to serve [~~Medicaid~~]clients under Title XIX [~~and~~]or Title XXI of the Social Security Act.

(4) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(5) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(6) "Performance Measure" means the quantitative, numerical measure of an aspect of the HMO or health plan, or its membership in part or in its entirety, or qualitative, descriptive information on the HMO in its entirety as described in HEDIS.

(7) "HEDIS" means the Health Plan Employer Data and Information Set, a set of standardized performance measures developed by the NCQA.

(8) "HEDIS data" means the complete set of HEDIS measures calculated by HMOs and health plans according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with HMOs or health plans.

(9) "Audited HEDIS data" means HEDIS data verified by an NCQA certified audit agency.

(10) "Committee" means Utah Health Data Committee established under the Utah Health Data Authority Act, Title 26, Chapter 33a, Utah Code.

(11) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(12) "Submission year" means the year immediately following the covered period.

R428-13-4. Submission of Performance Measures.

(1) Each HMO and health plan shall compile and submit HEDIS data to the Office according to this rule.

(2) By [~~September 1 of 1998 and every September 1 thereafter~~]July 1 of each year, all HMOs and health plans shall submit to the Office audited HEDIS data for the preceeding calendar year.

(3) Each HMO and health plan shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data prior to the HMO's or health plan's submitting it to the Office.

(4) [~~By June 1 of each submission year, each HMO and health plan shall submit to the Office a letter identifying the independent audit agency it contracts with to verify its HEDIS data.~~]

(5) Each HMO and health plan may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(6) If an HMO or health plan presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(7) The auditor shall follow the guidelines and procedures contained in [~~NCQA's "HEDIS~~]2002:Volume 5: HEDIS Compliance Audit: Standards[~~and Guidelines~~], Policies, and Procedures" published by NCQA, which is incorporated by reference[~~in effect on November 15 of the covered period~~].

([~~6~~]8) Each HMO and health plan shall cause its contracted audit agency to submit a copy of the audit agency's report by [~~September~~]July 1 of the submission year to the Office.

([~~7~~]9) Each HMO and health plan shall cause its contracted audit agency to submit a copy of the audit agency's final report by [~~October~~]August 15 of the submission year to the Office. The final report shall incorporate the HMO's or health plan's comments.

R428-13-5. Release of Performance Measures.

(1) The Health Data Committee shall follow NCQA's "HEDIS Compliance Audit: Standards[~~and Guidelines~~], Policies, and Procedures" to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give HMOs and health plans 35 days to review any report which identifies it by name. The identified HMO or health plan may submit comments and alternative interpretations to the Office.

. . . . . .

R428-13-7. Penalties.

[~~Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation, and for any subsequent similar violation within two years for violation of a class A misdemeanor.~~]Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $3,000 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health plan, health [~~planning~~]performance, health [~~policy~~]plan quality
[~~December 24, 1998~~]2002
26-33a

▼ ▼

Labor Commission, Industrial Accidents
R612-2-20
Travel Allowance and Per Diem

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24915
FILED: 06/04/2002, 11:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to increase meal allowances paid to injured workers when travel is required to receive necessary medical treatment.

SUMMARY OF THE RULE OR CHANGE: This change raises the amount paid for breakfast from $5 to $6, lunch from $6 to $9, and dinner from $10 to $15 in workers' compensation cases where the injured worker is required to travel for medical treatment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34A-2-101 et seq., 34A-3-101 et seq., and 34A-1-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no additional cost or savings to the state budget for administering this amendment. As an employer the increased meal allowances will ultimately be incorporated in worker compensation premiums. Any such increase will be negligible in amount.
❖ LOCAL GOVERNMENTS: As an employer the increased meal allowances will ultimately be incorporated in worker compensation premiums. Any such increase will be negligible in amount.
❖ OTHER PERSONS: As an employer the increased meal allowances will ultimately be incorporated in worker compensation premiums. Any such increase will be negligible in amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment imposes no additional compliance costs, other than the small incremental increase in premiums, anticipated to be negligible in amount.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The costs associated with this amendment are very small in amount and apply to very few cases. Consequently, the amendment will have no appreciable impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Joyce Sewell, Sara Danielson, or Alan Hennebold at the above address, by phone at 801-530-6988, 801-530-6880, or 801-530-6937, by FAX at 801-530-6904, 801-530-6804, or 801-530-7685, or by Internet E-mail at jsewell@utah.gov, sdanielson@utah.gov, or ahennebold@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: R Lee Ellertson, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $[~~5~~]6 per day for breakfast, $[~~6~~]9 per day for lunch, $[~~10~~]15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

KEY: workers' compensation, fees, medical practitioner
[~~July 5, 2001~~]2002
Notice of Continuation June 15, 1998
34A-2-101 et seq.
34A-3-101 et seq.
34A-1-104

▼ ▼

Labor Commission, Occupational Safety and Health
R614-1-5
Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24916
FILED: 06/04/2002, 12:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment expands the coverage of Utah's enforcement of 29 CFR 1910.119, Process Safety Management For Highly Hazardous Chemicals, to include blister agents HT, HD, H and Lewisite, and nerve agents GA and VX. The failure to previously include the foregoing chemical warfare agents in Utah's enforcement of 29 CFR 1910.119 was an oversight arising from the fact that these agents are not typical industrial chemicals. However, a small release of these lethal agents could produce catastrophic results. Extension of Utah's enforcement of 29 CFR 1910.119, Process Safety Management For Highly Hazardous Chemicals, to these agents will require management controls in the form of programs and procedures to prevent the occurrence of, and minimize the consequences of, releases of such agents.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment expands the coverage of Utah's enforcement of the existing standards found in 29 CFR 1910.119, Process Safety Management For Highly Hazardous Chemicals, to include blister agents HT, HD, H and Lewisite, and nerve agents GA and VX. The proposed amendment also applies the threshold quantity of 100 pounds currently found in 29 CFR 1910.119.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Because the Utah Division of Occupational Safety and Health (UOSH) already administers 29 CFR 1910.119 with respect to other highly hazardous chemicals, UOSH anticipates no additional enforcement costs related to expansion of the coverage of 29 CFR 1910.119 to the specified blister agents and nerve agents. Since the State does not store, handle or dispose of the specificed blister agents and nerve agents, the proposed amendment will produce no cost or savings to the State budget.

❖ LOCAL GOVERNMENTS: Because local governments do not store, handle or dispose of the specified blister agents or nerve agents, the proposed amendment will have no cost or savings impact on local government budgets.

❖ OTHER PERSONS: The Tooele Chemical Agent Disposal Facility is the only entity currently known to be subject to the expanded coverage of 29 CFR 1910.119. This facility already has qualified staff and programs in place to comply with 29 CFR 1910.119 standards. Consequently, expansion of the 29 CFR 1910.119 standards to the specified blister agents and nerve agents will have minimal cost impact on the Tooele facility, and no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that the proposed amendment will, in practice, have application only to the Tooele Chemical Agent Disposal Facility, which already has trained personnel and programs in place to meet the requirements of 29 CFR 1910.119. The proposed amendment should not impose any additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As noted above, it is anticipated that the proposed amendment will, in practice, have application only to the Tooele Chemical Agent Disposal Facility, which already has trained personnel and programs in place to meet the requirements of 29 CFR 1910.119. The proposed amendment should not impose any additional

compliance costs on the Tooele facility and should not impact other businesses at all.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:
William Adams at the above address, by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: R Lee Ellertson, Commissioner

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

. . . . . .

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX to be disposed of at the Tooele Chemical Agent Disposal Facility (TOCDF).

KEY: safety
[~~January 15,~~]2002
34A-6

▼ ▼

Labor Commission, Safety
R616-3-3
Safety Codes for Elevators

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24953
FILED: 06/12/2002, 14:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment maintains uniformity with other state and local agencies by adopting the same building code (International Building Code (IBC), 2000 edition) as other state agencies.

SUMMARY OF THE RULE OR CHANGE: The amendment adopts by reference the IBC 2000 edition and deletes existing references to the 1997 Uniform Building Code (UBC).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-1-101 et seq.

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: International Building Code, 2000 edition

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Purchase of the IBC 2000 edition will cost the Safety Division approximately $150. It is not anticipated that the substantive provisions of the Code will result in any cost or savings to the State's costs of building construction.
❖ LOCAL GOVERNMENTS: Most, if not all, local governments have already adopted the IBC 2000 edition. It is not anticipated that the substantive provisions of the Code will result in any cost or savings to local governments' costs of building construction.
❖ OTHER PERSONS: Because the IBC 2000 edition has already been adopted by most state and local agencies, it is not anticipated that the substantive provisions of the Code will result in any costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As previously noted, the IBC 2000 edition is already in effect in most jurisdictions. Because affected persons are already following the Code, no additional compliance costs should result from the Safety Division's adoption of the code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed rule amendment is to promote uniformity among the regulatory standards of different state and local agencies. By eliminating contradictory standards and the need to consult more than one building code, the proposed rule should have a generally positive fiscal impact 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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

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, 1996 ed., with 1997 Addenda issued December 31, 1996, 1998 Addenda issued February 19, 1998, 1999 Addenda issued June 30, 1999 and 2000 Addenda issued November 30, 2000. 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. The latest effective version of A17.1 is the 1996 edition with the 1997 addenda, 1998 addenda, 1999 addenda and 2000 addenda.

B. ASME A17.3 - 1996 Safety Code for Existing Elevators and Escalators with 2000 addenda issued February 29, 2000. 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. [~~1997 Uniform Building Code Chapters 11 and 30.~~]2000 International Building Code.

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.

KEY: elevators[~~*~~], certification, safety
[~~January 15,~~] 2002
Notice of Continuation January 10, 2002
34A-1-101 et seq.

▼ ▼

Natural Resources, Wildlife Resources
R657-4
Possession of Live Game Birds

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24958
FILED: 06/13/2002, 15:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing Rule R657-4 as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: Section R657-4-3 is being amended to clarify that a person is required to obtain a hatchery license from the Department of Agriculture and Food pursuant to Section 4-29-4, if that person operates a hatchery or offers any chicks, poults, or hatching eggs for sale. Section R657-4-6 is being amended to add that a statement from a veterinarian is required to release game birds, and the birds must be tested for Salmonella pullorum or come from a flock that participates in the National Poultry Improvement Plan (NPIP). Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: These amendments are for clarification only. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.
❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖ OTHER PERSONS: These amendments are for clarification and do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification. The DWR determines that there are no additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-4. Possession of Live Game Birds.

. . . . . .

R657-4-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aviculture installation" means an enclosed place such as a pen or aviary where privately owned game birds are propagated or kept, and restricts the game birds from escaping into the wild.

(b) "Commercial use" means, for purposes of this rule, the sales of any game birds authorized by the certificate of registration in excess of $5,000 annually.

(c) "Game bird" means;

(i) crane;

(ii) [~~blue, ruffed, sage, sharp~~]Blue, Ruffed, Sage, Sharp-tailed, and [~~spruce~~] Spruce grouse;

(iii) [~~chukar, red~~]Chukar, Red-legged, and Hungarian partridge;

(iv) pheasant;

(v) [~~band-~~]Band-tailed [~~pigeon;~~]Pigeon;

(vi) [~~bobwhite~~]Bobwhite, California, Gambel's, [~~harlequin, mountain, and scaled~~]Harlequin, Mountain, and Scaled quail;

(vii) waterfowl;

(viii) [~~common ground,~~]Common Ground, Inca, [~~mourning,~~]Mourning, and [~~white~~]White-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

(A) Eastern;

(B) Florida or Osceola;

(C) Gould's;

(D) Merriam's;

(E) Ocellated; and

(F) Rio Grande; and

(x) ptarmigan.

(d) "Pen-reared wild turkey" means any turkey or turkey egg held under human control that:

(i) is imprinted on other poultry or humans; and

(ii) has morphological characteristics of wild turkeys.

(e) "Wild turkey" means recognized subspecies and hybrids of free-ranging turkeys hatched in the wild. Recognized subspecies and hybrids between subspecies include Eastern, Florida or Osceola, Gould's, Merriam's, Ocellated, and Rio Grande.

R657-4-3. Certificates of Registration.

(1) Except as provided in Subsections R657-4-3(5) and R657-4-7(2), a person may not possess, import, purchase, propagate, sell, barter, trade, or dispose of any live game bird, or the eggs of any game bird, without first obtaining a certificate of registration for aviculture from the division.

(2) Any person who has obtained a certificate of registration for aviculture may possess, import, purchase, propagate, sell, barter, trade, or dispose of only those species of game birds designated on that person's certificate of registration.

(3) Certificates of registration for aviculture:

(a) are not transferable; and

(b) are valid for five years from the date of issuance.

(4)(a) Any person who has applied for and obtained a certificate of registration for aviculture must comply with all state, federal, city, and other municipality laws, rules, and regulations pertaining to the possession of live game birds.

(b) A person shall not operate a hatchery or offer any chicks, poults, or hatching eggs for sale in Utah without first obtaining a hatchery license from the Department of Agriculture and Food as provided in Section 4-29-4.

(5) A person who acquires live game birds is not required to obtain a certificate of registration:

(a) if the game birds are used for training dogs as provided in Rule R657-46;

(b) if the game birds are used for the sport of falconry and:

(i) each game bird held in possession is banded with a metal leg band purchased from the division;

(ii) the game birds are not held in possession longer than 60 days;

(iii) a bill of sale establishing proof of purchase from a legal source is in possession; and

(iv) a valid entry permit number and a certificate of veterinary inspection has been obtained from the Department of Agriculture and Food as provided in Rule R58-1 if the game birds are imported into Utah; or

(c) for holding game birds in temporary storage while the game birds are in transit through Utah provided the birds are identified as to their source and destination and are not removed from the shipping containers.

. . . . . .

R657-4-6. Unlawful Possession -- Release of Game Birds.

(1) A person may not:

(a) take any live game bird or the egg of any game bird from the wild, except as provided in Rules R657-3 and R657-6 and the proclamation of the Wildlife Board for taking upland game;

(b) release or abandon any live game bird without first obtaining written authorization from the division director or appropriate regional supervisor as provided in Subsection (2), except that game birds may be released for training dogs or raptors as provided in Rule R657-46; or

(c) release any wild turkey or pen-reared wild turkey from captivity.

(2) A person must submit a letter requesting permission to release game birds and must include the operator's:

(a) name, address and telephone number;

(b) certificate of registration number;

(c) area and date of intended release;

(d) species to be released;

(e) number and sex of each species to be released; and

(f) a statement from a veterinarian that the birds [~~are disease free and in good health.~~]have been tested for Salmonella pullorum or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(3) In determining whether to allow the release of a game bird as allowed under Subsection (1)(b), the division shall consider:

(a) the potential release site and its relative impact on wildlife and wildlife habitat;

(b) the species or subspecies of game birds to be released; and

(c) the activity for which the game birds are to be released.

(4)(a) Any game bird that escapes from captivity becomes the property of the state of Utah.

(b) The director may authorize the destruction of any escaped game birds that may impact wildlife.

(5) The division may dispose of game birds or their eggs held in possession in violation of this rule.

(6) Game birds or their eggs held in captivity must be confined to the registered aviculture installation, except when in transit or being displayed.

R657-4-7. Importation of Live Game Birds and Eggs of Game Birds.

(1) Except as provided in Subsection (2) and Section R657-4-3(5), a person importing live game birds or the eggs of game birds into Utah must first obtain:

(a) a valid entry permit number and a certificate of veterinary inspection from the Department of Agriculture and Food as provided in Rule R58-1 and in accordance with Section 4-29-2; and

(b) a certificate of registration from the division.

(2) A nonresident importing live game birds into Utah is not required to obtain a certificate of registration for aviculture unless the game birds remain in Utah longer than 72 hours.

. . . . . .

KEY: wildlife, birds, game laws, aviculture[~~*~~]
[~~August 17,1999~~]2002
Notice of Continuation October 27, 1997
23-14-18
23-14-19
23-13-4

Natural Resources, Wildlife Resources
R657-6
Taking Upland Game

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24959
FILED: 06/13/2002, 15:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the upland game and Sandhill Crane hunts and Sandhill Crane drawing as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: Section R657-6-4 is being amended to implement a limited entry permit allocation strategy for all Sage-grouse hunting to ensure a harvest of no more than 10% of estimated fall populations on hunt units. A limited number of Sage-grouse permits will be issued. The permit will allow a hunter to take two birds per season. If any permits are remaining a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird permit, which may be used over the extended falconry season for taking Sage-grouse. A limited number of Sharp-tailed Grouse permits will also be available. A person must submit an application and a handling fee to obtain both the Sage-grouse and Sharp-tailed Grouse permits. The actual permit is issued free of charge. Section R657-6-5 is being amended to allow persons to withdraw their applications and reapply in the Sandhill Crane drawing or to amend their applications for the Sandhill Crane drawing provided the withdrawal, re-application or amendment is completed by the initial application deadline. Provisions are being amended to eliminate the accepted methods of payment for handling fees and permits, which are currently covered under Rule R657-42. Section R657-6-9 is being amended to clarify that Sandhill Crane may be taken with any size of nontoxic shot. Section R657-6-26 is being amended to close Goshen Warm Springs to all upland game hunting. Section R657-6-31 is being amended to add provisions on exporting upland game from Utah and clarify the shipping of upland game. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 50 CFR 20, 2001 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These amendments are for clarification, to allow the withdrawal, re-application or amendment to an application in the Sandhill Crane drawing, and to require that an application be submitted with the handling fee for a free Sage-grouse or Sharp-tailed Grouse permit. The charging of the handling fee for Sage-grouse and Sharp-tailed Grouse permits offsets the Division's cost in processing applications for the free permits. Otherwise, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: These amendments are for clarification, to allow the withdrawal, re-application or amendment to an application in the Sandhill Crane drawing, and to require that an application be submitted with the handling fee for a free Sage-grouse or Sharp-tailed Grouse permit. Therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification, to allow the withdrawal, re-application or amendment to an application in the Sandhill Crane drawing, and to require that an application be submitted with the handling fee for a free Sage-grouse or Sharp-tailed Grouse permit. If a person wishes to obtain a Sage-grouse or Sharp-tailed Grouse permit, that person must submit a $5 handling fee with the application for the desired permit. There is no charge for the permit. DWR determines that there are no additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-6. Taking Upland Game.
R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, [~~2000~~]2001 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation and the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

. . . . . .

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds [~~(Mourning Dove,~~](Band-tailed Pigeon, Mourning Dove and Sandhill Crane).

(2)(a) A person may call [~~1-800-WETLAND (1-800-938-5263)~~]the telephone number published in the proclamation of the Wildlife Board for taking upland game or register online at www.wildlife.utah.gov to obtain their HIP registration number. Use of a public pay phone will not allow access to [~~1-800-WETLAND.~~]the telephone number published in the proclamation of the Wildlife Board for taking upland game.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;
(b) hunting license code key;
(c) name;
(d) address;
(e) phone number;
(f) birth date; and
(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

[~~(a)~~](i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

[~~(b)~~](ii) Sage-grouse without first obtaining a Sage-grouse permit;

[~~(c)~~](iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

[~~(d)~~](iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

[~~(2)(a) There will be 663 two-bird, Sharp-tailed Grouse permits available.~~](b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the proclamation of the Wildlife Board for taking upland game, if any permits are remaining.

[~~(b) The Sharp-tailed Grouse permit will be available~~](2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the proclamation of the Wildlife Board for taking upland game.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sage-grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sage-grouse permit request forms must be submitted with a handling fee.

(3)(a) A limited number of two-bird[~~-~~
~~(3)(a) Band-tailed Pigeon, Sage-grouse~~], Sharp-tailed Grouse[~~,~~] permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sharp-tailed Grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sharp-tailed Grouse permit request forms must be submitted with a handling fee.

(4)(a) Band-tailed Pigeon and White-tailed Ptarmigan permits [~~will be~~]are available from Division offices[~~ and~~], through the mail, and through the Division's Internet address by the first week in August, free of charge.

(5) Sage-grouse, Sharp-tailed Grouse, Band-tailed Pigeon and White-tailed Ptarmigan permit forms are available from Division offices and through the Division's Internet address.

R657-6-5. Application Procedure for Sandhill Crane.

. . . . . .

(8)[~~(a) Personal checks, money orders, cashier's checks and credit cards are accepted.~~

~~(b) Personal checks drawn on an out-of-state account are not accepted.~~

~~(9)~~] The posting date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

[~~(10)~~](9) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

[~~(11)~~](10) To apply for a resident permit or license, a person must establish residency at the time of purchase.

[~~(12)~~](11) The posting date of the drawing shall be considered the purchase date of a permit.

[~~(13)(a)~~](12)(a) [~~A person~~]An applicant may withdraw their application for the Sandhill Crane Drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) [~~A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.~~]An applicant may reapply in the Sandhill Crane Drawing provided:

[~~(d) Handling fees~~](i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fee will not be refunded.

(13)(a) An applicant may amend their application for the Sandhill Crane Drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-6-6. Application Procedure, Waiting Period and Bonus Points for Wild Turkey.

. . . . . .

(8)[~~(a) Personal checks, money orders, cashier's checks and credit cards are accepted.~~

~~(b) Personal checks drawn on an out-of-state account are not accepted.~~

~~(c) Credit cards must be valid at least 30 days after the drawing results are posted.~~

~~(d) Handling fees shall be charged to the credit card when the application is processed.~~

~~(e) An application is voidable if the check is returned unpaid from the bank, or the credit card is invalid or refused.~~

~~(9)~~] The posting date of the drawing results is published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

[~~(10)(a)~~](9)(a) Any permits remaining after the drawing are available only by mail-in request.

(b) Requests for remaining permits must include:

(i) full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, and driver's license number (if available);

(ii) proof of hunter education certification, if applicable;

(iii) small game or combination license number or fees; and

(iv) the permit fee.

(c) Requests must be submitted to the Salt Lake Division office as published in the Turkey Addendum to the Upland Game proclamation of the Wildlife Board for taking upland game.

(d) Requests shall be filled on a first-come, first-served basis beginning on the date published in the Turkey Addendum to the Proclamation of the Wildlife Board for taking upland game.

[~~(11)~~](10) Unsuccessful applicants will receive a refund in March.

[~~(12)~~](11) Any person who obtained a Rio Grande turkey permit during the preceding two years may not apply for or obtain a Rio Grande turkey permit for the current year. Any person who obtains a Rio Grande turkey permit in the current year, may not apply for or obtain a Rio Grande turkey permit for a period of two years, except:

(a) Waiting periods do not apply to the purchase of turkey permits remaining after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in the following two years.

(b) Waiting periods do not apply to conservation permits or landowner permits.

[~~(13)(a)~~](12)(a) A bonus point is awarded for:

(i) a valid unsuccessful application when applying for a permit in the turkey drawing; or

(ii) a valid application when applying for a bonus point in the turkey drawing.

(b)(i) A person may apply for one turkey bonus point each year, except a person may not apply in the drawing for both a turkey permit and a turkey bonus point in the same year.

(ii) Group applications will not be accepted when applying for bonus points.

(c) A bonus point shall not be awarded for an unsuccessful landowner application.

(d) Each applicant receives a random drawing number for:

(i) the current valid turkey application; and

(ii) each wild turkey bonus point accrued.

(iii) The applicant will retain the lowest random number for the drawing.

(e) Bonus points are forfeited if a person obtains a wild turkey permit, except as provided in Subsection (13)(e).

(f) Bonus points are not forfeited if:

(i) a person is successful in obtaining a Conservation Permit or Landowner Permit; or

(ii) a person obtains a Poaching-Reported Reward Permit.

(g) Bonus points are not transferable.

(h) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

[~~(14)(a)~~](13)(a) An applicant may withdraw their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Addendum to the Proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) An applicant may reapply in the wild turkey permit drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fees will not be refunded.

[~~(15)(a)~~](14)(a) An applicant may amend their application for the wild turkey permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.[

~~(d) Handling fees will not be refunded.~~]

. . . . . .

R657-6-9. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes between BB and no. 6;

(iii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic;

(iv) a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted; [~~and~~]

[~~(iv)~~](v) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in the Big Game Proclamation; and

(vi) Sandhill Crane may be taken with any size of nontoxic shot.

(b) Crossbows are not legal archery equipment for taking upland game.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

. . . . . .

R657-6-13. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) [~~Mourning Dove,~~]Band-tailed Pigeon, Mourning Dove and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, wild turkey, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) Pheasant and quail may not be taken prior to 8 a.m. on the opening day of the pheasant and quail seasons.

(3) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

. . . . . .

R657-6-15. Falconry.

(1)(a) Falconers must obtain an annual small game or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

. . . . . .

R657-6-19. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads that are [~~not~~]posted [~~closed~~]open.

. . . . . .

R657-6-26. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, Garland City, Layton, Logan, Pleasant View City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) [~~Waterfowl~~]Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

. . . . . .

R657-6-28. Baiting Migratory Game Birds.

Migratory game birds may not be taken by the aid of baiting, or on or over any baited area. However, nothing in this paragraph shall prohibit:

(1) the taking of Sandhill Crane, Mourning Dove, and Band-tailed Pigeon on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(2) the taking of [~~Sandhill Crane~~]Band-tailed Pigeon, Mourning Dove, and [~~Band-tailed Pigeon~~]Sandhill Crane on or over any lands where feed has been distributed or scattered solely as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes.

. . . . . .

R657-6-31. Shipping or Exporting.

(1) No person may transport upland game by the Postal Service or a common unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

R657-6-32. Importation Limits.

No person shall import during any one calendar week beginning on Sunday more than 25 doves, singularly or in the aggregate, or ten [~~band~~]Band-tailed [~~pigeons~~]Pigeons from any foreign country, except Mexico. Importation of doves and [~~band~~]Band-tailed [~~pigeons~~]Pigeons from Mexico may not exceed the maximum number permitted by Mexican authorities to be taken in any one day.

. . . . . .

KEY: wildlife, birds, rabbits[~~*~~], game laws
[~~March 5,~~]2002
Notice of Continuation June 16, 1997
23-14-18
23-14-19

Natural Resources, Wildlife Resources
R657-32
Wildlife License, Permit or Certificate of Registration Refund

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24923
FILED: 06/05/2002, 12:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: An agency review resulted in combining Rule R657-32 with Rule R657-42. The procedures and requirements for refunds are currently incorporated into Rule R657-42 and therefore, Rule R657-32 is no longer needed. (DAR NOTE: The proposed amendments to Rule R657-42 were published in the June 1, 2002, issue of the Utah State Bulletin under DAR No. 24836.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-38

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division of Wildlife Resources (DWR) determines that repealing this rule will not create a cost or savings impact to the state budget or DWR's budget. This rule provides the conditions and procedures for obtaining a refund for a wildlife license, permit, or certificate of registration as authorized under Section 23-19-38. The rule is being repealed due to these procedures being adopted under Rule R657-42.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: DWR determines that this filing will not create a cost or savings impact to other persons. This rule provides the conditions and procedures for obtaining a refund for a wildlife license, permit, or certificate of registration as authorized under Section 23-19-38. The rule is being repealed due to these procedures being adopted under Rule R657-42.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this filing will not create a compliance cost for affected persons. This rule provides the conditions and procedures for obtaining a refund for a wildlife license, permit, or certificate of

registration as authorized under Section 23-19-38. The rule is being repealed due to these procedures being adopted under Rule R657-42.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule does not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: Kevin Conway, Director

{**DAR Note:** Because of publication constraints, the repealed text of this rule is not printed in this *Bulletin*, but is published by reference to a copy on file at the Division of Administrative Rules. The text may also be inspected at the agency (address above) or in the *Utah Administrative Code* which is available at any state depository library.}

▼ ▼

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN 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 CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends July 31, 2002. At its option, the agency may hold public hearings.

From the end of the waiting period through October 29, 2002, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Air Quality
R307-415-9
Fees for Operating Permits

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 24492
Filed: 06/07/2002, 11:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes are made in response to public comments and direction from the Air Quality Board.

SUMMARY OF THE RULE OR CHANGE: In response to public comments and direction from the Air Quality Board, the revised rule allows a refund to a source that is no longer subject to the Operating Permits rule. In addition, references to credits and billing cycle are removed, and language is simplified and made more consistent throughout this portion of the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 1, 2002, issue of the Utah State Bulletin, on page 34. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-109 and 19-2-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The changes do not affect the state budget, as the program is operated with fees from affected sources.
❖ LOCAL GOVERNMENTS: A local government might receive a benefit if it operates a source of pollution that is no longer subject to the Operating Permits rule.
❖ OTHER PERSONS: This change allows a source that is no longer subject to the Operating Permits rule to receive a refund rather than a credit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change allows a source that is no longer subject to the Operating Permits rule to receive a refund rather than a credit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change allows the benefit of a refund to be extended to any source that is no longer subject to the Operating Permit rule, not just a source that is no longer in business, as was proposed originally.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at jmiller@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2002

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definitions apply only to R307-415-9.

(a) "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(b) "Chargeable pollutant" means any "regulated air pollutant" except the following:

(i) carbon monoxide;

(ii) any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(iii) any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, [~~it shall be billed in the next billing cycle, and~~]the emission fee shall be calculated using the emissions that would have been used had the source been billed at [~~the appropriate~~]that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source [~~ceases operation, is redesignated as a non-Part 70 source, or is otherwise exempted from the emission fee requirements~~]is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased [~~operation or was reclassified~~]to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be [~~credited to the source's account, but will not be~~]refunded.

(i) [~~When that Part 70 source resumes operation or~~]If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source [~~resumed operation or was reclassified~~]again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation.[~~for that Part 70 source minus any credit in the source's account.~~

~~(i)~~] The emission fee [~~for a Part 70 source that has resumed operation~~]shall continue to be based on actual emissions reported for the last full calendar year of operation [~~before the shutdown~~]until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee [~~or credit~~]shall be calculated using allowable emissions.[

~~(iii) Temporary shut downs of less than three months, or other normal shut downs due to seasonal work or regularly scheduled maintenance shall not qualify for an emission fee credit.~~

~~(iv) A Part 70 source that is no longer operating, is redesignated as a non-Part 70 source, or is otherwise exempted from the emission fee requirements, and has a credit for emission fees, may transfer the credit to another Part 70 source for use. Credit is established by an acknowledgment from the executive secretary identifying the amount of the credit. Transfer of credit is accomplished by submitting to the executive secretary documentation from the holder and user of the credit verifying the transfer.~~]

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, environmental protection, operating permit, emission fee
2002
Notice of Continuation March 1, 1999
19-2-109.1
19-2-104

Environmental Quality, Radiation Control
R313-17-2
Public Notice and Public Comment Period

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 24715
Filed: 06/14/2002, 09:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To maintain rules which are compatible with 10 CFR 40.

SUMMARY OF THE RULE OR CHANGE: To add two license categories to Subsection R313-17-2(1)(a). Subsection R313-17-2(1)(a) states that the Executive Secretary will give public notice and an opportunity to comment on proposed licensing actions for these license categories. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2002, issue of the Utah State Bulletin, on page 9. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-103.5, 19-3-104, and 19-3-108

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since this rule change requires only public notice and the opportunity to comment on proposed licensing actions associated with identified license categories, there is no cost or savings impact for the State budget.
❖ LOCAL GOVERNMENTS: Since the rule requires only public notice and an opportunity to comment on licensing actions associated with identified license categories, there is no cost or savings impact to the local Government.
❖ OTHER PERSONS: Since the rule requires only public notice and an opportunity to comment on licensing actions associated with identified license categories, there is no cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the rule change only relates to public notice and an opportunity to comment on proposed licensing actions and not inspections, there is no compliance costs for affected persons associated with this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule change will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cjones@deq.state.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 07/31/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 09/10/2002

AUTHORIZED BY: William Sinclair, Director

R313. Environmental Quality, Radiation.
R313-17. Administrative Procedures.
R313-17-2. Public Notice and Public Comment Period.

(1) The Executive Secretary shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b[~~,~~] and c,[~~ and d,~~] 4a, b, c, d and 6 identified in R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to use in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by publication in a newspaper of general circulation in the area affected by the proposed action. Notice shall also be given to persons on a mailing list developed by the Executive Secretary and those who request in writing to be notified.

KEY: administrative procedures, public comment, public hearings, orders
2002
Notice of Continuation July 23, 2001
19-3-103.5
19-3-104

▼ ▼

Insurance, Administration
R590-131
Accident and Health Coordination of Benefits Rule

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 24597
Filed: 06/14/2002, 09:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of the recent hearing and comment period, it was determined that additional changes needed to be made to this rule.

SUMMARY OF THE RULE OR CHANGE: Changes to Section R590-131-3 are merely technical causing no change in meaning and intent of the rule. Changes to Section R590-131-4 include requiring insurers to properly consider coordination of benefits (COB) claims if submitted to the wrong company; language clarification and added benefit determination step. Changes to Section R590-131-6 added privacy guidelines to coordinate with Gramm-Leach-Bliley Act; added wording for insurer recovery rights; added additional months of insurance investigation in regards to insurers and noncontracted providers; and grammatical changes. Changes to Section R590-131-9 changed the enforcement date procedures. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the April 1, 2002, issue of the Utah State Bulletin, on page 13. Underlining in the rule below indicates text that has been added since the publication of the proposed rule

mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-21-307

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The changes to the rule will require all health insurers to file policy forms with the department to be in compliance with this rule. Currently there are approximately 200 licensed health insurers doing business in Utah. The cost of a filing is $25 which would then be submitted to the general fund. The additional work involved in processing the filings will be assimilated into the department's daily workload. No additional help will be required.
❖ LOCAL GOVERNMENTS: This rule will not affect local government since the rule applies only to licensees of the department.
❖ OTHER PERSONS: The change will cost the approximately 200 health insurance companies $25 for each health policy form type they will need to change to comply with this rule and then file with the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change will cost the approximately 200 health insurance companies $25 for each health policy form type they will need to change to comply with this rule and then file with the department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have limited affect on insurance companies.

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@insurance.state.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 08/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
7/17/2002 at 11:00 AM, State Office Building, behind Capitol, Room 5112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2002

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-131. Accident and Health Coordination of Benefits Rule.

. . . . . .

R590-131-3. Definitions.

A. [~~"Allowable Expense"~~]"Allowable Expense" means:

1. The amount on which a plan would base its benefit payment for covered services in the absence of any other coverage.

2. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

3. The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

4. When COB is restricted in its use to a specific coverage in a contract, for example, major medical or dental, the definition of allowable expense must include the corresponding expenses or services to which COB applies.

B. "Birthday" refers only to month and day in a calendar year, not the year in which the person was born.

C. "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

1. services (including supplies);

2. payment for all or a portion of the expenses incurred;

3. a combination of (1) and (2) above; or

4. an indemnification.

D. "Continuation Coverage" means coverage provided under right of continuation pursuant to the federal (COBRA) law or the state extension law[~~ (State Extension)~~]. For the purposes of this rule, a person's eligibility status will maintain the same classification under continuation coverage.

E. "Coordination of Benefits" or "COB" means the process of determining which of two or more accident and health insurance policies, or other policies specifically included in this rule, covering a loss or claim, will have the primary responsibility to pay the loss or claim, and also the manner and extent to which the other policies shall pay or contribute.

F. "Custodial Parent" means the parent awarded custody of a child by a court decree. In the absence of a court decree, the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation[~~,~~] is the custodial parent.

G. "Hospital Indemnity Benefits" means benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

H. "Noncomplying Plan" means a plan that is not subject to this Rule.

I. "Plan" means a form of coverage with which coordination is allowed. The definition of plan in the contract must state the types of coverage, which will be considered in applying the COB provision of that contract.

1. This rule uses the term plan. However, a contract may, instead, use "Program" or some other term.

2. Plan shall include:

a. individual, group, or HMO health insurance contracts providing hospital expense or medical surgical expense benefits, except those explicitly excluded under Subsection R590-131-3.I.3.;

b. group, group-type, and individual automobile "no-fault" medical payment contracts, [~~(~~]after statutory PIP limit 31A-22-306 through 309[~~)~~]; and

c. Medicare or other governmental benefits, except as provided in Subsection R590-131-3.I.3.f. below. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program.

3. Plan [~~may~~]shall not include:

a. hospital indemnity coverage;

b. disability income protection coverage;

c. accident only coverage;

d. specified disease or specified accident coverage;

e. nursing home and long-term care coverage;

f. a state plan under Medicaid, and [~~may~~]shall not include a law or plan when, by state or federal law, its benefits are in excess of those of any private insurance plan or other non-governmental plan; and

g. Medicare supplement policies.

J. "Primary Plan" means a plan whose benefits for a person's health care coverage must be determined first according to R590-131-4 B. A plan is a primary plan if either of the following conditions is true:

1. the plan has no order of benefit determination;

2. all plans which cover the person use the order of benefit determination provisions of this rule and under those requirements the plan determines its benefits first.

K. "Secondary Plan" means a plan, which is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of this rule decides the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the provisions of this rule, has its benefits determined before those of that secondary plan.

R590-131-4. Rules for Coordination of Benefits.

A. General Rules:

1. The primary plan must pay or provide its benefits as if the secondary plans or plan did not exist. A primary plan may not deny payment or a benefit on the grounds that a claim was not timely submitted if the claim was timely submitted to one or more secondary plans and was submitted to the primary plan within 36 months of the date of service. A plan that does not include a coordination of benefits provision may not take the benefits of another plan into account when it determines its benefits.

2. A secondary plan may take the benefits of another plan into account only when, under these rules, it is secondary to that other plan.

B. Determining Order of Benefits. Each plan determines its order of benefits using the first of the following rules [~~which~~]that apply:

1. The [~~plan~~]benefits [~~covering~~]of the plan, which covers the person as an employee, member or subscriber, that is, other than as a dependent, are determined before those of the plan [~~covering~~]which cover the person as a dependent.

2. Dependent Child/Parents Married or Living Together. The rules for the order of benefits for a dependent child when the parents are married or living together are as follows.

a. The benefits of the plan of the parent whose birthday falls earlier in the calendar year are determined before those of the plan of the parent whose birthday falls later in the year.

b. If both parents have the same birthday, the benefits of the plan, which covered the parent longer, are determined before those of the plan which covered the other parent for a shorter period of time.

c. If the other plan, R590-131-3.I.2b, does not have the rule described in R590-131-4.B.1, .2 and .3, but instead has a rule based upon another order, and if, as a result, the coordinating plans do not agree on the order of benefits, the rule of the other plan will determine the order of benefits.

3. Dependent Child/Parents Separated, Divorced or Not Living Together. If two or more plans cover a person as a dependent child of parents divorced, separated or not living together, benefits for the child are determined in the following order:

a. first, the plan of the custodial parent of the child;

b. then, the plan of the spouse of the custodial parent of the child;[~~ and~~]

c. the plan of the non-custodial parent; and

[~~c.~~]d. finally, the plan of spouse of the non-custodial parent.

i. If the specific terms of a court decree state that one of the parents is responsible for the child's health care expenses or health insurance coverage, and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no coverage for the child's health care services or expenses, but that parent's spouse does, the spouse's plan is primary. This subparagraph shall not apply with respect to any claim determination period or plan year during which benefits are paid or provided before the entity has actual knowledge.

ii. If the specific terms of a court decree state that the parents have joint custody, without stating that one of the parents is responsible for the health care expenses or health insurance coverage of the child and the child's residency is split between the parents, the order of benefit determination rules outlined in Subsection R590-131-4 B.2. Dependent Child/Parents [~~Not Separated or Divorced~~]Married or Living Together shall apply. This subparagraph shall not apply with respect to any claim determination period or plan year during which benefits are paid or provided before the entity has actual knowledge.

d. If there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and the parents' spouses, if any, is:

i the plan of the custodial parent;

ii the plan of the spouse of the custodial parent;

iii the plan of the non-custodial parent; and then

iv the plan of the spouse of the non-custodial parent.

4. Active/Inactive Employee, Member or Subscriber. The benefits of a plan, which covers a person as an active employee, member, and subscriber[~~ or as that employee's dependent~~], are determined before those of a plan, which cover that person as an inactive employee, member, or subscriber[~~, or as that employee's dependent~~]. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this provision is ignored.

5. Longer/Shorter Length of Coverage. If none of the above rules determine the order of benefits, the benefits of the plan which covered an employee, member, or subscriber longer are determined before those of the plan which covered that person for the shorter term.

a. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the claimant was eligible under the second within 24 hours after the first ended.

b. The start of a new plan does not include:

i. a change in the amount or scope of a plan's benefits;

ii. a change in the entity which pays, provides or administers the plan's benefits; or

iii. a change from one type of plan to another, such as, from a single employer plan to that of a multiple employer plan.

c. The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

. . . . . .

R590-131-6. Miscellaneous Provisions.

. . . . . .

E. Right To Receive and Release Needed Information. Certain facts are needed to apply these COB rules. An insurer has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. An insurer need not tell, or get the consent of, any person to do this. To facilitate cooperation with insurers; guidelines for medical privacy issues are provided under U.A.R R590-206, and Title V of Gramm-Leach-Bliley Act of 1999. Each person claiming benefits under a plan shall give the insurer any facts it needs to pay the claim.

F. Facility of Payment. A payment made under another plan may include an amount, which should have been paid under the plan. If it does, the insurer may pay that amount to the organization, which made that payment. That amount will then be treated as though it were a benefit paid under the plan. The insurer will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

G. Right of Recovery. If the amount of the payments made by an insurer is more than it should have paid under the provisions of this rule, it may recover the excess from one or more of the following:

1. The insurer may recover from:

a. [~~the~~]The insured it has paid. However, reversals of payments made due to issues related to coordination of benefits are limited to a time period of [~~120 days~~]18 months from the date a payment is made unless the reversal is due to fraudulent acts, fraudulent statements, or material misrepresentation by the insured. It is the insurers responsibility to see that the proper adjustments between insurers and providers are made.

b. The[~~b. the~~] non-contracted provider it has paid. It is the insurers responsibility to see that the proper adjustments between insurers and providers are made. However, reversals of payments made due to issues related to coordination of benefits are limited to a time period of [~~120 days~~]36 months from the date a payment is made unless the reversal is due to fraudulent acts, fraudulent statements, or material misrepresentation by the insured.

c. [~~contracted~~]The contracted providers it has paid . Subject to 31A-26-[~~301.6(15)(a)(i)(ii) (iii)~~]301.6(15)(a)(ii), it is the insurers responsibility to see that the proper adjustments between insurers and providers are made.

2. The insurer may recover from insurance companies. or

3. The insurer may recover from other organizations.

H. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

I. A plan, whether primary or secondary, may not be required to pay a greater total benefit than would have been required had there been no other plan.

J. Exception to claim payment guidelines and timetables expressed under 31A-26-[~~301.6~~]301.5(2)(b) and R590-192-7, for coordination of benefit claims are allowed by the secondary plan [~~if~~]:

1. [~~The~~]if the secondary plan has proof that they are the secondary plan; and

2. [~~A claim is~~]for only as long as a submitted claim is without an explanation of benefits from the primary plan.

. . . . . .

R590-131-8. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances[~~, may~~] shall not be affected.

R590-131-9. [~~Enforcement Date~~]Existing Contracts.

The commissioner will begin enforcing the revised [~~provision~~]provisions of this rule 45 days from the [~~rule's effective date. Non-revised provisions are enforceable as of the~~]rule's effective date.

KEY: insurance law
2002
Notice of Continuation December 3, 1997
31A-2-201
31A-21-307

End of the Notices of Changes in Proposed Rules Section

Notices of 120-Day (Emergency) Rules Begin on the Following Page

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Public Safety, Highway Patrol
R714-500
Chemical Analysis Standards and Training

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 24895
FILED: 06/03/2002, 11:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to set forth procedures whereby the department may certify breath alcohol testing instruments, programs, operators, technicians, and program supervisors.

SUMMARY OF THE RULE OR CHANGE: The rule change clarifies that internal standards on a subject test do not have to be recorded numerically.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-6-44.3(1)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no cost or savings to the state because the state is already doing what the rule change provides for.
❖ LOCAL GOVERNMENTS: There is no cost or savings to local government because local government is already doing what the rule change provides for.
❖ OTHER PERSONS: There is no cost or savings to other persons because other persons are not affected by the rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because only state and local law enforcement agencies are affected by the rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no fiscal impact on businesses.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

On May 20, 2002, in the case of State v. Slawson, Case No. 015911467, Third Judicial District Court, a motion to suppress intoxilyzer test results in a DUI case was granted because of a judicial interpretation of Subsection R714-500-5(6). In that case the court interpreted the intoxilyzer internal standards readout to be part of the "analytical results on a subject test" and therefore required the readout to be reported numerically on the test record card. The way the intoxilyzer software is set up, the internal standards print out as "O.K." or "internal standards failure." They do not print out numerically. In order to prevent additional DUI cases from being lost the department is amending the rule to clarify that the internal standards on a subject test do not have to be recorded numerically.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

THIS RULE IS EFFECTIVE ON: 06/03/2002

AUTHORIZED BY: Robert Flowers, Commissioner

R714. Public Safety, Highway Patrol.
R714-500. Chemical Analysis Standards and Training.

. . . . . .

R714-500-5. Program Certification.

A. All breath alcohol testing techniques, methods, and programs, hereinafter "program", must be certified by the department.

B. Prior to initiating a program, an agency or laboratory shall submit an application to the department for certification. The application shall show the brand and/or model of the instrument to be used and contain a resume of the program to be followed. An on-site inspection shall be made by the department to determine compliance with all applicable provisions in this rule.

C. Certification of a program may be denied, suspended, or revoked by the department if, based on information obtained by the department, program supervisor, or technician, the agency or laboratory fails to meet the criteria as outlined by the department.

D. All programs, in order to be certified, shall meet the following criteria:

(1) The results of tests to determine the concentration of alcohol on a person's breath shall be expressed as equivalent grams of alcohol per 210 liters of breath. The results of such tests shall be entered in a permanent record book for department use.

(2) Printed checklists, outlining the method of properly performing breath tests shall be available at each location where tests are given. Test record cards used in conjunction with breath testing shall be available at each location where tests are given. Both the checklist and test record card, after completion of a test should be retained by the operator.

(3) The instruments shall be certified on a routine basis, not to exceed 40 days between calibration tests, by a technician, depending on location of instruments and area of responsibility.

(4) Certification procedures to certify the breath testing instrument shall be performed by a technician as required in this rule, or by using such procedures as recommended by the manufacturer of the instrument to meet its performance specifications, as derived from:

(a) electrical power tests,
(b) operating temperature tests,
(c) internal purge tests,
(d) internal calibration tests,
(e) diagnostic tests,
(f) invalid function tests,
(g) known reference samples testing, and
(h) measurements displayed in grams of alcohol per 210 liters of breath.

(5) Results of tests for certification shall be kept in a permanent record book retained by the technician. A report of the certification procedure shall be recorded on the approved form (affidavit) and sent to the program supervisor.

(6) Except as set forth in paragraph 7 in this section, [~~A~~]all analytical results on a subject test shall be recorded, using terminology established by state statute and reported to three decimal places. For example, a result of 0.237g/210L shall be reported as 0.237.

(7) Internal standards on a subject test do not have to be recorded numerically.

(8) The instrument must be operated by either a certified operator or technician.

. . . . . .

KEY: alcohol, intoxilyzer, breath testing, operator certification
June 3, 2002
Notice of Continuation November 2, 2000
41-6-44.3
63-46b

▼ ▼

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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).

Administrative Services, Facilities Construction and Management
R23-1
Procurement of Construction

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24925
FILED: 06/06/2002, 09:21

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 63-56-14(2) provides for the State Building Board to adopt rules governing the procurement of construction by the Division of Facilities Construction and Management. These rules must comply with Title 63, Chapter 56, Utah Procurement Code. These rules must also comply with some additional requirements that apply only to the procurement of construction by the Division that are contained in Title 63A, Chapter 5, State Building Board-Division of Facilities Construction and Management.

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: This rule is required to provide additional details, procedures and dollar limits to the framework of the Procurement Code in order to fully address procurement procedures and requirements. Without this rule, the Division would be in violation of a number of statutory requirements that certain issues be more fully addressed by rule. The rule is also required to allow the Division to utilize some of the provisions of the Procurement Code. For example, Section 63-56-22 allows for less stringent procedures for small purchases but requires that small purchases be defined by rule and procured in accordance with procedures established by rule.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 06/06/2002

Administrative Services, Facilities Construction and Management
R23-19
Facility Use Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24978
FILED: 06/14/2002, 12:38

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: This rule is authorized under Section 63A-5-204, authorizing the Executive Director of the Department of Administrative Services to adopt rules governing facilities and the state grounds surrounding those facilities, which are managed by the Division of Facilities Construction and Management (DFCM).

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule serves as a standard used for buildings managed by DFCM and other state agencies and institutions. This is necessary so that all tenants have consistent guidelines to work from regarding building and ground use.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye or Priscilla Anderson at the above address, by phone at 801-538-3284 or 801-538-3263, by FAX at 801-538-3378 or 801-538-3378, or by Internet E-mail at knye@utah.gov or phanderson@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 06/14/2002

Commerce, Consumer Protection
R152-11
Utah Consumer Sales Practices Act

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24900
FILED: 06/03/2002, 14:08

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 13-11-8 requires the Division of Consumer Protection to adopt substantive rules that prohibit with specificity acts or practices that violate the Utah Consumer Sales Practices Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received by the division regarding the rule since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: By defining those acts or practices that are deemed deceptive, this rule provides a standard that businesses can and have adapted their business practices to. The need for the standard still exists.

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

COMMERCE
CONSUMER PROTECTION
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:
Kevin Olsen at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at kvolsen@utah.gov

AUTHORIZED BY: Francine Giani, Director

EFFECTIVE: 06/03/2002

Commerce, Consumer Protection
R152-20
New Motor Vehicle Warranties

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24901
FILED: 06/03/2002, 14:08

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 13-2-5 authorizes the director of the Division of Consumer Protection to issue rules to administer and enforce the New Motor Vehicle Warranties Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received by the division since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines terms of the act that have proven problematical for the division to enforce. These definitions have also assisted manufacturers and consumers in resolving issues that are raised by the Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
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:
Kevin Olsen at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at kvolsen@utah.gov

AUTHORIZED BY: Francine Giani, Director

EFFECTIVE: 06/03/2002

Commerce, Consumer Protection
R152-26
Telephone Fraud Prevention Act

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24899
FILED: 06/03/2002, 14:07

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: Section 13-2-5 authorizes the director of the Division of Consumer Protection to issue rules to administer and enforce the Telephone Fraud Prevention Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received by the division regarding this rule since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines terms and clarifies registration and bonding requirements. The need for the rule continues to exist.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
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:
Kevin Olsen at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at kvolsen@utah.gov

AUTHORIZED BY: Francine Giani, Director

EFFECTIVE: 06/03/2002

Commerce, Real Estate
R162-1
Authority and Definitions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24908
FILED: 06/03/2002, 17:26

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 61-2-5.5(1) authorizes the Commission to make rules for the administration of the chapter, including the licensing of principal brokers, associate brokers, and sales agents.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule states the authority for making rules and collecting fees and provides definitions for terms used in the rules and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

Commerce, Real Estate
R162-2
Exam and License Application Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24952
FILED: 06/12/2002, 11:23

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 61-2-5.5 authorizes the Real Estate Commission to adopt rules to administer the licensing, education, and examination of real estate licensees. This rule sets forth the examination and application requirements for real estate agents, brokers, companies and nonresident applicants.

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 were 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 necessary to specify the application, examination, and licensing procedures for real estate licensees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/12/2002

Commerce, Real Estate
R162-3
License Status Changes

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24907
FILED: 06/03/2002, 17:14

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 61-2-5.5(1) authorizes the Commission to make rules for the administration of the chapter, including the licensing of principal brokers, associate brokers, and sales agents.

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 were 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 to have a rule which sets forth the process for a licensee to make various status changes in his or her license and to apply to renew the license.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

Commerce, Real Estate
R162-4
Office Procedures - Real Estate Principal Brokerage

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24906
FILED: 06/03/2002, 17:12

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 61-2-5.5(1)(a)(iii) requires the Commission to make rules for: the proper handling of funds received by licensees; brokerage office procedures; and recordkeeping requirements.

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 were 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 necessary to specify the records licensees are required to keep and to establish trust account procedures and office procedures. No comments have been received in opposition to the rule, with the exception that it has been suggested that the amount of the broker deposit be revised upward to keep pace with the increasing costs of banking services. A rule change which would do that is pending.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

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Commerce, Real Estate
R162-5
Property Management

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24905
FILED: 06/03/2002, 17:07

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: Subsection 61-2-5.5(1)(a)(iv) authorizes the Commission to make rules for the administration of the chapter, including rules for property management. Subsection 61-2-10(4)(a) authorizes making rules which allow a principal broker to be responsible for more than one brokerage at a time. Current rules allow a principal broker to be responsible for one sales brokerage and one property management brokerage at the same time.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: At approximately the same time as the last five-year review, extensive amendments were proposed pursuant to Subsection 61-2-10(4)(b) which would have provided for specialized property management licenses. The majority of written comments received did not support the proposed changes. The majority of the negative comments cited the increased cost of additional specialized licenses. The proposed changes were not adopted. No written comments were received that were critical of the version of the rule as it is currently in effect.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is overwhelming industry support for the rule, which allows a principal broker to license a separate entity under a different name than his real estate sales brokerage to conduct property management business. Without the rule, a principal broker would have to conduct both sales and management business through the same company and would not have the flexibility to have two entities, each with a business name tailored to the specific type of business it conducts.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

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Commerce, Real Estate
R162-6
Licensee Conduct

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24928
FILED: 06/07/2002, 17:10

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 61-2-5.5 authorizes the Real Estate Commission to adopt rules for the conduct of real estate licensees. This rule sets forth those standards of conduct.

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 were 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 necessary to define the standards of practice for real estate licensees and to list specific improper practices that will give rise to disciplinary action.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/07/2002

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Commerce, Real Estate
R162-7
Enforcement

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24904
FILED: 06/03/2002, 16:59

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 61-2-5.5(1)(a) authorizes the Commission to make rules for the administration of the chapter. Section 61-2-11 authorizes the Division to investigate violations of the chapter. It also authorizes the Commission and the Division to take enforcement action for violation of the chapter.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides procedures for filing a complaint, giving notice of the complaint to the licensee, and establishes a deadline for a licensee to respond to a notice of complaint. It also lists the types of investigation and enforcement action taken by the Division and provides a process by which the Division may give corrective notice to a licensee instead of taking formal enforcement action. The procedures set forth in this rule help the Division in its investigation and enforcement efforts.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

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Commerce, Real Estate
R162-8
Prelicensing Education

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24903
FILED: 06/03/2002, 16:53

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 61-2-6(1) requires the Commission with the concurrence of the Division to approve prelicensing educational programs for real estate agents and brokers. Subsection 61-2-5.5(1)(a)(ii) authorizes the Commission to make rules for prelicensing education curricula, examination procedures, and the certification and conduct of real estate schools, course providers, and instructors.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Commission and the Division are required to approve prelicensing education programs. The rule provides the method and standards for approval of prelicensing schools and instructors.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

Commerce, Real Estate
R162-101
Authority and Definitions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24911
FILED: 06/03/2002, 17:31

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 61-2b-6(1)(l) authorizes the Division with the concurrence of the Board to make rules for the administration of the chapter.

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 were 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 states the Division's authority to make rules and to establish and collect fees, and provides definitions for terms used in the appraiser rules. It is helpful to state the authority for rules and fees and it is necessary to provide definitions for terms used in the rules.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

Commerce, Real Estate
R162-103
Appraisal Education Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24909
FILED: 06/03/2002, 17:28

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 61-2b-6(1)(l) authorizes the Division with the concurrence of the Board to make rules for the administration of the chapter. Subsection 61-2b-8(1)(a) requires the Board to determine the education required for persons licensed and certified under the chapter.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Since the Board is required to determine the education requirements for persons licensed and certified under the chapter, it is necessary to have a rule in place that establishes procedures for approving educational offerings and that provides a method for review of an individual applicant's past education.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

Commerce, Real Estate
R162-109
Administrative Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24912
FILED: 06/03/2002, 17:38

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 61-2b-6(1)(l) authorizes the Division to adopt rules for the administration of the chapter. The Utah Administrative Procedures Act, Section 63-46b-1 et seq., authorizes agencies to make rules to designate categories of proceedings as formal or informal and to proscribe procedures for those 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 comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: If an agency does not have rules designating categories of adjudicative proceedings as informal proceedings, then all proceedings must be conducted on a formal basis. Formal proceedings are more costly and time-consuming than informal proceedings. No comments have been received in opposition to the rule.

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

COMMERCE
REAL ESTATE
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:
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 06/03/2002

Community and Economic Development, Community Development, Community Services
R202-201
Energy Assistance: General Provisions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24968
FILED: 06/14/2002, 09:58

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines the purpose, authority, rights, responsibilities complaints, and hearings process for HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: HEAT is a continuing state program and requires this rule for the operation of its program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-202

Energy Assistance: Program Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24970
FILED: 06/14/2002, 10:44

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards for HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-203

Energy Assistance: Income Standards, Eligibility, Payments

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24971
FILED: 06/14/2002, 10:54

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards of HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-204

Energy Assistance: Assets Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24972
FILED: 06/14/2002, 11:04

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards of HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-205

Energy Assistance: Program Benefits

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24973
FILED: 06/14/2002, 11:08

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards of HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-206

Energy Assistance: Eligibility Determination

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24974
FILED: 06/14/2002, 11:19

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards of HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-207

Energy Assistance: Records Management

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24975
FILED: 06/14/2002, 11:23

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards of HEAT.

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 were received

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Community and Economic Development, Community Development, Community Services

R202-208

Energy Assistance: Special State Programs

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24976
FILED: 06/14/2002, 11:31

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: Sections 9-12-101 to 9-12-106 authorize and promulgate provisions of the state's Home Energy Assistance Target (HEAT) Program which provides home energy assistance to low income households. This rule defines certain program standards of HEAT.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The HEAT Program is a continuing state program and requires this rule for the operation of its program.

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
Room 500
324 S STATE ST
SALT LAKE CITY UT 84111-2388, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sherm Roquiero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at sroquier@dced.state.ut.us

AUTHORIZED BY: Kerry Bate, Director

EFFECTIVE: 06/14/2002

Health, Epidemiology and Laboratory Services, Laboratory Services

R438-10

Rules for Establishment of a Procedure to Examine the Blood of all Adult Pedestrians and all Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24932
FILED: 06/11/2002, 08:54

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: Subsections 26-1-30(2)(q) and (r) authorize the creation of a program to examine the blood of all adult pedestrians and drivers killed in a motor vehicle accident for the presence of alcohol. This rule implements that statutory authorization.

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 were received since the rule's enactment in 1987. The rule has not been amended since its enactment.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes a procedure to examine blood of all adult pedestrians and drivers of motor vehicles killed in highway crashes for the concentration of alcohol for the purpose of deriving statistics that allow policy makers to craft appropriate public policy to reduce highway fatalities resulting from impairment due to alcohol consumption.

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: Rod Betit, Executive Director

EFFECTIVE: 06/11/2002

Health, Epidemiology and Laboratory Services, Laboratory Improvement

R444-1

Approval of Clinical Laboratories

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24921
FILED: 06/04/2002, 17:19

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 26-1-30(2)(m) provides that: "The department is authorized to establish and enforce standards for laboratory services when the purpose of the services is to protect public health." This rule sets forth the standards for approval of clinical laboratories to assure that they are capable of providing laboratory services in a competent fashion and that threats to public health are accurately identified.

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 regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide standards for the approval of clinical laboratories to conduct examinations in the State. The rule incorporates by reference the federal Clinical Laboratory Improvement Act (CLIA) under 42 CFR part 493, 1990 edition. Other programs and rules within the Department require testing for their programs be performed in Department approved clinical laboratories. This rule also allows the Department to revoke approval of laboratories that fail to meet specific requirements of the rule.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
LABORATORY IMPROVEMENT
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: Rod Betit, Executive Director

EFFECTIVE: 06/04/2002

Health, Epidemiology and Laboratory Services, Laboratory Improvement

R444-14

Rule for the Certification of Environmental Laboratories

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24954
FILED: 06/13/2002, 15:37

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: Subsection 26-1-30(2)(m) states that the Department of Health shall adopt and enforce standards for laboratories that conduct tests dealing with public health. This rule adopts these standards and allows for enforcement of these standards for laboratories that conduct tests on environmental samples.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule has been

through three revisions since the last notice of continuation. The rule has been amended in response to comments received during the rulemaking process. The rule has been modified to include many of the standards established by the National Environmental Laboratory Accreditation Conference.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes standards for Utah laboratories seeking certification to perform testing where the results of the testing are to be used by state regulatory agencies for environmental compliance, and should be continued.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
LABORATORY IMPROVEMENT
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: Rod Betit, Executive Director

EFFECTIVE: 06/13/2002

Human Resource Management, Administration
R477-1
Definitions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24934
FILED: 06/11/2002, 14:37

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: Subsection 67-19-6(1)(d) gives the Department of Human Resource Management (DHRM) broad powers within the Administrative Rulemaking Act to "...adopt rules for personnel management...." DHRM has opted to use a format similar to the Utah Code in that definitions are treated in a separate section for quick reference rather than in the text of the rules unless it is clearer for the non-expert reader to have the definition within the text.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Most comments received regarding DHRM rules request changes. We treat these requests for changes as opposition to the existing rule. For R477-1, most requests are to add definitions. Over the previous five years these have included recommendations to: 1) define a working day; 2) define the term "acknowledgement" in a disciplinary setting and require written documentation as an affirmative gesture of acknowledgement; 3) amend the definition of an employee personnel file to exclude informal supervisory notes of employee performance (this recommendation was accepted); 4) define sick leave abuse; 5) amend the definition of "hostile work environment" to include the traditional six areas of antidiscrimination (this recommendation was accepted); 6) amend the terms "malfeasance" and "misfeasance" to reflect the definitions in Black's Law Dictionary (this recommendation was accepted); 7) define oppression; 8) remove the term "age" from the definition of discrimination after the Supreme Court ruled that states cannot be sued by citizens claiming discrimination; and 9) remove the word "behavior" from the definition of constant review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM rules can be complex and involved, especially for the non-expert reader. Dedicating one of these rules to the definition of commonly used terms can be a great assist to understanding and terms are easier to look up. DHRM did not implement the following recommendations for the reasons noted: 1) working day: it is very difficult to define this term in a common way that will not conflict with the flex time policies of the state, instead, where clarification is needed in a particular situation, it is spelled out in the text of the rule; 2) acknowledgement: the definition requested would place excessive pressure on management, especially in areas of the state where employees are spread over a wide geographic area and this is not required for due process, again, where clarification is needed in a particular case, it is spelled out in the text of the rule; 4) sick leave abuse: a common definition of this term removes flexibility from management to deal with abuse on a case-by-case basis, such a definition may also hurt employees whose legitimate use of sick leave may fall into a pattern that is included in a definition; 7) oppression: this term is not common in the DHRM rules, appearing only in one place, Hostile Work Environment, in which it is adequately defined in the context of that section; 8) remove the term "age" from the definition of discrimination: even though the Supreme Court ruled that states cannot be sued by citizens on this issue, the federal government still retains enforcement powers in these cases; and 9) remove the word "behavior" from the definition of constant review: this would restrict disciplinary efforts to poor performance and not allow management to impose corrective action for behaviors that defame other employees or create a hostile work environment based on the categories of discrimination.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

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Human Resource Management, Administration
R477-2
Administration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24935
FILED: 06/11/2002, 14:38

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: This rule of the Department of Human Resource Management (DHRM) governs applicability of rules, compliance, record keeping and information, fair employment practice, and the Quality Service Award. Statutory authority for these rules is found in several sections of the Utah Code. Subsection 63-2-204(2) gives government entities authority to write rules governing requests for information under the Government Records and Management Act (GRAMA; Title 63, Chapter 2. Section 67-19-6 gives DHRM broad rulemaking authority for the human resource management system. Section 67-19-6.4 requires DHRM to write rules implementing a Quality Service Award. Subsection 67-19-18(3) gives DHRM authority to write rules governing the procedural and documentary requirements for disciplinary matters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments for the past five years pertaining to this rule focused primarily on the contents of employee records and record keeping procedures, especially in disciplinary matters: 1) The Utah National Guard and the Utah Public Employees' Association (UPEA) suggested that time limits be provided in rule for the amount of time that an adverse record be kept in the employee file; 2) UPEA suggested that the rule allow an employee to request a copy of documentary evidence in a disciplinary hearing at the agency level; 3) human resource professionals suggested that computerized records be kept on site for 65 years and that the final disposition of disciplinary actions be added to the list of public information items in Subsection R477-2-5(7) (the second item was accepted); and 4) the Division of Risk Management suggested that age discrimination be removed from the grievance procedure since the Supreme Court ruled that states cannot be sued under the Age Discrimination in Employment Act by their citizens.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule contains requirements for state compliance with federal laws governing discrimination and equal employment opportunity and Section 67-19-4, record keeping for state employees under the Personnel Management Act in Subsections 67-19-8(5) and 67-19-18(3) and the Government Records Access and Management Act and the requirements of the Nepotism Act, Section 52-3-1. Most suggestions for changes to this section over the past five years were not accepted by DHRM: 1) the suggestion to set time frames on the retention of adverse records in an employee file was not accepted because this is already provided in GRAMA and in other parts of the Code for certain types of employees such as social workers and peace officers, also, this suggestion has the potential of inhibiting an agency from dealing with recurring and disruptive behaviors in disciplinary situations, and the rule does provide in Subsection R477-2-5(3) for employees to review their files and challenge any record; 2) the suggestion by UPEA to allow an employee to request documentary evidence in an agency disciplinary hearing was rejected because it would make the hearing a formal hearing governed by the Utah Administrative Procedures Act, the Grievance and Appeals Procedures of Title 67, Chapter 19a, make it clear that this hearing is informal (Section 67-19a-402); 3) the suggestion to retain employee records for 65 years at the agency is far in excess of what is required by law and is inconsistent with procedures for records preservation prescribed by the Division of Archives; and 4) age as a factor in discrimination was not removed because even though the Supreme Court ruled that states cannot be sued by citizens on this issue, the federal government still retains enforcement powers in these cases.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-3
Control of Personal Service Expenditures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24936
FILED: 06/11/2002, 14:39

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: This rule is written under authority of the general rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6.

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 concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule recognizes the joint role of DHRM, the Division of Finance, and the Governor's Office of Planning and Budget to monitor and control personnel service expenditures for the state. The rule was written with input and consent from all three entities.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-4
Classification

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24937
FILED: 06/11/2002, 14:39

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: Subsection 67-19-8(2) charges the Department of Human Resource Management (DHRM) with responsibility for the "...design and administration of the state classification system...", and Section 67-19-12 which also touches on key components of the classification system in Subsection 67-19-12(3) implies that DHRM will write rules to implement the section.

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 Utah Public Employees Association (UPEA) made three requests in the past five years to allow an employee to request a classification review of his position if the agency refuses to request the review as provided in Section R477-4-4.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 67-19-8, Functions of department (DHRM) not to be delegated, makes the design and administration of the classification system the exclusive domain of DHRM. The suggestion by UPEA that an employee be allowed to request a classification review of his position was not accepted for two reasons: first, this would place a burdensome workload on a limited number of analysts in DHRM; classification studies of individual positions are time consuming projects and are frequently requested by employees who seek reclassification for reasons not related to classification; and second, DHRM feels this would require an inappropriate intrusion into responsibilities belonging to agencies; the assignment of duties is the prerogative of management.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-5
Filling Positions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24938
FILED: 06/11/2002, 14:40

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: This rule is written under the broad grant of rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6. Specifically, this rule addresses the requirements in Section 67-19-16, Appointments to Schedule B Positions - Examinations - Hiring Lists - Probationary Service - ..., and Section 67-19-15.7, Promotion - ....

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comment on this rule focused on three areas: reorganization, probationary periods, and transfers/reassignments. All but one comment came from the Utah Public Employees' Association (UPEA): 1) UPEA suggested that an employee be allowed to retire if his position changes substantially after a major reorganization; 2) when an employee is transferred from one work location to another that is 50 miles or more from their current work location, the state will pay for the employee to move closer to the new location or pay commuting expenses up to the cost of the move. UPEA suggests that this be changed to 25 miles; 3) UPEA suggested that the probation period not be extended even when the employee moves to another job during the probationary period that has very different qualifications; 4) the Department of Human Services suggested language for reassignment and transfer that will bring the DHRM rules in compliance with a court case involving the transfer of a state employee, Ronald Draughn. This recommendation was accepted in 2000 and revised in 2001; UPEA suggested that the new language stemming from the Draughn case is not sufficient.

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 the foundation for the recruitment and selection procedures that implement the requirements of Section 67-19-16, generally accepted principles of merit and competitive recruitment practices, and case law. DHRM disagreed with many of the comments concerning this rule for the following reasons: 1) allowing an employee to retire is not within the lawful authority of DHRM, the employee can retire at any time if the criteria set down in the Code, as administered by the Utah Retirement System, are met; 2) the 50 mile figure was established after much consultation with agencies who have offices throughout the state, fifty miles was chosen as a parameter which is reasonable in both rural and urban areas, a 25 mile figure is not reasonable because of the potential financial burden it may place on agencies; 3) the suggestion not to extend the probationary period would defeat the purpose of the probationary period, probation is the last step in the selection process and is designed to assure that the new hire can perform in an actual job situation. In the instance of a transfer, there may not be enough time for the employee to demonstrate competence in the new position; and 4) the new language defining transfers and reassignments was thoroughly researched by attorneys employed by the state and familiar with the Draughn case.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-6
Employee Status and Probation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24939
FILED: 06/11/2002, 14:41

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 67-19-16(5) requires agency heads to make hires from hiring lists for probationary periods established by rule and for the Director of the Department of Human Resource Management (DRHM) to make rules establishing probationary periods.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Only one comment regarding this rule was received. The Department of Transportation suggested that probationary periods be extended when the employee is on extended paid leave because of injury or illness.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule implements the requirements of Section 67-19-16 regarding probationary periods. The probationary period is the final step in the selection process and the gateway to merit status. The suggestion to extend the probationary period when the employee is ill is not in the best interest of the employee. A new employee will not have accrued sufficient leave to be absent for extended periods that will impact the purpose of probation.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-7
Compensation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24940
FILED: 06/11/2002, 14:41

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 67-19-12 requires the Department of Human Resource Management (DHRM) to work with the Governor to establish pay plans for each position in the classified service (Subsection 67-19-12(4))and to issue rules for the administration of pay plans (Subsection 67-19-12(4)(c)(iii)).

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 few comments received regarding this rule focus on how a new hire is placed on the pay plan and how senior employees are treated in the longevity program: 1) the Utah Public Employees' Association (UPEA) suggested that all new hires begin at step one of the pay range, this will prevent new employees from being paid more than current employees; 2) in 1998, a new longevity program was authorized by the legislature that gave employees a one step increase every three years instead of 3.5% increase every five years, UPEA suggested that those employees who are eligible for a longevity increase in that year be given the 3.5% since they had waited for the full five years to receive it (DHRM agreed); 3) the Division of Finance suggested that DHRM adopt a statewide de minimis standard for incentive awards (DHRM agreed and worked closely with Finance and agencies to establish an acceptable standard); 4) UPEA suggested that employees in longevity status be given a step increase if they are selected as a highest level performer; and 5) the Department of Human Services suggested that a provision be removed that prohibits an employee from receiving a promotion if he receives an unsatisfactory rating on only one part of his performance review (DHRM agreed that this a very strict requirement and removed the provision).

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Due to the critical nature of employee compensation for the state budget and for the employee, this rule is monitored closely by all interested parties and is perhaps the most researched of the DHRM rules. Many provisions of this rule represent agreements made with interested parties over long periods of time. At the same time, DHRM is very sensitive to the budgetary and legal implications when considering proposed changes: 1) DHRM feels the suggestion to limit all new hires to the first step is too restrictive, it creates internal red tape which only slows down the system and adds expense. It removes the discretion agencies may need to hire qualified employees, especially in a tight job market. It does not account for legitimate factors which may explain an incumbent's lower salary, such as performance variables. It is DHRM's experience that agency directors are very concerned about the morale of employees and are careful not to create salary inequities when hiring from outside state government. This issue has not been a problem in recent years and no grievances have been filed on this issue for the past five years. DHRM believes that a better solution in the long run is to pursue a strategy that will move

employees along their pay ranges toward the midpoint; and 2) Section 67-19-15.6, Longevity salary increases, sets the criteria for giving steps to employees in longevity status. This suggestion by UPEA contradicts the law.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-8
Working Conditions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24941
FILED: 06/11/2002, 14:42

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: This rule addresses numerous state and federal laws that require implementation through rule or clarification for administrative purposes. These include the federal Family Medical Leave Act (FMLA) and the regulations associated with it in 29 USC 2601, the Fair Labor Standards Act (FLSA) and the regulations associated with it in 29 CFR parts 500-899 (1996) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Each of these acts require conformance by employers and provide for certain degrees of flexibility that must be addressed in rule. Numerous sections of the Utah Code must also be addressed in rule. These include: Title 34A, Chapter 2, that provides the Workers Compensation benefit for state employees; Section 39-3-1 that provides for time off for state employees for military purposes; Title 49, Chapter 9, that provides the Long Term Disability benefits for state employees; Section 63-13-1 that provides for official state holidays; Section 67-19-6 that provides broad rulemaking authority for the Department of Human Resource Management (DHRM) and is the legal provision for the annual leave benefit; Section 67-19-6.7 that defines overtime benefits for state employees in addition to the Fair Labor Standards Act; Section 67-19-12.5 that defines the flexible benefit program authorized by the Internal Revenue Service; Section 67-19-12.9 that provides for annual leave conversion to the deferred compensation program; and Section 67-19-14 that establishes the legal foundation for the converted sick leave and sick leave retirement 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: The contents of Rule R477-8 have significant impact on employees, agencies, and the budget. As a consequence, a great amount of input is received concerning this rule. Over the past five years, this input can be grouped into five areas: A) the Family Medical Leave Act (FMLA); B) the Fair Labor Standards Act (FLSA); C) leave in general; D) the sick leave retirement benefit; and E) some miscellaneous items. A) Comments concerning FMLA came exclusively from state agencies who were struggling with the implications of this federal act. The concerns were two-fold: 1) agencies suggested that, for ease of administration, FMLA leave become a separate category instead of being used concurrently with other accrued leave while the employee was absent; and 2) agencies wanted to place restrictions on employees that do not comply with the requirements of the act such as reporting the reason for the leave. B) all comments regarding rules on FLSA came from agencies who struggled with implications of this act on their operations. Four general suggestions were made over the five-year period, all of which were adopted: 1) agency executive directors not be allowed to accumulate more than 80 hours of compensatory time; 2) that compensatory hours be paid when an employee transfers to another agency so that the fiscal burden is borne by the agency that allowed them to accumulate; 3) that the rules clarify managerial responsibility to approve the accumulation of compensatory and excess hours in advance; and 4) that the criteria for "on call" time be clarified. C) all comment regarding leave in general came from the Utah Public Employees' Association (UPEA). Their focus was primarily on the expansion of the benefit. Their suggestions included: 1) an increase in the amount of annual leave and converted sick leave that can be carried over into the next year from 320 hours to 480 hours; 2) personal preference day granted in Section 63-13-1 be a separate day of leave instead of the first day of annual as stated in current policy; 3) that employees on flexible work schedules of 9 and 10-hour days be allowed to use leave without pay to make up the hours when an 8-hour holiday falls on one of their working days; and 4) that annual and sick leave accrual rates be increased for senior employees. Of these suggestions, the only one DHRM adopted was the increase in the annual accrual rate for senior employees. This was done after a market survey proved that the state was providing fewer annual leave hours to senior employees than other states, local governments in Utah and the private sector. D) UPEA was responsible for nearly all comments concerning the sick leave retirement benefit. This was a major legislative push for UPEA and they worked to influence the writing of rules implementing the program. Lengthy hearings were held when they disagreed with the rule on: 1) governing how much

leave time was needed to purchase Medicare supplemental insurance for employee and spouse and when the rule required retired employees to pay the same percentage of premium as current employees; 2) suggested that DHRM remove by rule the requirement that 480 hours be deducted from the employees' sick leave balances before they could take advantage of this benefit; and 3) the Division of Finance suggested that retired employees pay the same percentage of premium as current employees to reduce pressure on the termination pool from which this benefit is paid. This suggestion was adopted. E) There were a variety of miscellaneous suggestions, mostly from agencies. These include suggestions to: 1) give agencies maximum flexibility to participate in the Utah Transit Authority (UTA) ECO buss pass program (adopted); 2) clarify that a day of special leave such as funeral, military or jury leave was the equivalent of eight hours (adopted); 3) that the rule require employees to arrive at work on time regardless of weather (adopted); 4) UPEA wanted flexible working agreements and telecommuting agreements to be in place for one year (not adopted); 5) a rewording of the holiday leave rule to require the employee to be in a paid status before and after the holiday in order to receive the holiday (adopted); 6) change the rule for long term disability (LTD) to require the employee to declare at the time of placement on LTD status how accrued leave will be paid (adopted); and 7) UPEA requested that allegations of sick leave abuse be in writing prior to requesting a note from a doctor.

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 lengthy and complex. It implements many federal and state statutes that grant specific benefits to employees such as the FMLA and USERRA and establishes an administrative framework for other benefit programs that are defined in code such as holiday leave, military leave, LTD, and Workers' Compensation. Disagreement with input on this rule is the result of concerns for cost impact to agencies and legal concerns. The responses to A): The suggestions for changes in FMLA are rejected because the act does not allow employers to restrict employees' access to the benefits. DHRM does not allow FMLA leave to be a separate category because of the potential cost to the state. The respones to C): the suggestions by UPEA to expand the leave benefits were all too costly to justify with market data with the exception of increase in annual leave accrual for senior employees. The response to 1): an increase in the amount of leave that can be carried over into the next year would increase the payout for terminating employees by 50%. The response to 2): granting the personal preference day would require the state to pay for an additional 25,000 days of work at a cost of almost $3,500,000. The response to 3): giving employees on flexible working schedules access to leave without pay gives them an unfair advantage over employees who work standard eight-hour days. The response to 4): DHRM did adopt an increase in annual leave accrual rates for senior employees when market data justified the adjustment. This does impose additional costs on the state but is consistent with statutory intent to maintain market compensation for state employees. This was done in 1999 at the request of UPEA. When the request was made in 2001 by UPEA to increase accrual rates even more it was rejected because market data did not support it. The responses to D): 1) the suggestion to allow employee and spouse to purchase Medicare supplemental insurance on 8 hours of sick leave instead of the 16 required by current policy would double the cost of this benefit; 2) the suggestion to remove the 480-hour deduction from the employee's accumulated sick leave cannot be done by rule because it is required by law; and 3) requiring retirees to pay the same percentage of premium was a suggestion made by the Division of Finance as a means to reduce the fiscal pressure on the termination pool from which this benefit is paid. The responses to E): 4) UPEA's request to make telecommuting and flexible working hour agreements unchangeable for one year was not adopted. These are not employee rights and management must have the ability to respond to changes in the workplace that may require the agreements to be altered or cancelled if they are being abused. This suggestion would place these privileges in the context of contract law and move any resolution of problems into a formal procedure fraught with due process; and 7) requiring allegations of sick leave abuse to be in writing is an overly restrictive injunction on management discretion. Managers have the responsibility to confront employees when performance is substandard and resolve the problem. When leave abuse is the problem, management may make a variety of informal attempts to resolve it. This places discussions of leave abuse in a more formal arena which will impede management ability to solve the problem.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-9
Employee Conduct

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24942
FILED: 06/11/2002, 14:43

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: Title 67, Chapter 16, Utah Ethics Act, requires employees to notify management of potential conflicts in interest with employment with the State. Section 67-19-19 governs political activity of certain classes of state employees. Section 67-19-6 contains a general grant of rulemaking authority to the Department of Human Resource Management (DHRM) to govern the human resource management system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: An agency suggested that rules be written concerning workplace violence. DHRM proposed to repeal the provision prohibiting firearms in the workplace. Interested persons from the public asked for a hearing on the proposal which was held on December 20, 2001. Following the hearing, DHRM rescinded the provision according to the proposal. A transcript of the hearing is available in the DHRM offices.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule contains important provisions governing general employee behavior on the job and deals with provisions in the law governing employee behavior off the job such as political activity and second jobs. The suggestion to write rules on workplace violence was not adopted. These issues are adequately covered in Subsection R477-11-1(4).

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AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-10
Employee Development

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24943
FILED: 06/11/2002, 14:43

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 67-19-6 contains a general grant of rulemaking authority for human resource management and a specific charge concerning training programs and who has authority for certain types of training. Section 67-19-12 governs pay plans and gives authority to the Department of Human Resource Management (DHRM) to write rules governing how employees receive step advances on the salary range. Performance may be considered in writing these rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Much comment was received concerning this rule, mostly focusing on corrective action and performance evaluation. The Utah Public Employees' Association (UPEa) provided a good deal of input concerning corrective action. They proposed to limit corrective actions to just 90 days. This was seriously considered and adopted but the limit was placed at six months. Another suggestion that was adopted from UPEA was to allow an employee to submit written comment in response to corrective action. They asked that another employee be present during discussion with the supervisor about corrective action, a procedure to discipline an employee who refuses to sign a corrective action plan, and that corrective actions be limited to those specifically listed in the plan. Concerning performance evaluation, UPEA offered several suggestions. These included: rules that Highest Level Performers have exceptional ratings on all parts of their evaluation, that sick leave abuse not be referenced in the performance evaluation, that exams not be allowed for performance evaluations, and that managers be disciplined for failure to submit employee evaluations. Agencies also submitted some input on this rule. Their suggestions included: reducing corrective actions to only three actions, raising the limits on education assistance to the federal limits, change the phrase "sexual harassment" to "unlawful harassment," requiring a performance evaluation at the beginning and end of a corrective action period. The suggestions for raising the limits on education assistance and the requirement of a performance evaluation to begin and end a corrective action were adopted.

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 parameters for agencies in conducting important development activities for employees including evaluation of their performance, corrective actions to save employees whose performance is not up to standard, training and educational assistance. Documentation of employee performance and agency attempts to help an employee improve performance are

important records in disciplinary proceedings and justification of employee salary increases. DHRM did not adopt many suggestions to amend this rule over the past five years. The recommendation from UPEA to allow another employee to be present during discussion of corrective action would place formal due process procedures on what is intended to be an informal process to correct an employee's poor performance. The request to discipline an employee who will not sign a corrective action plan is seen as too restrictive and punitive. Again, this is an informal process and provisions are in rule to handle this without creating additional conflict. At the same time, the plan is intended to be flexible and attempts to restrict its application were not adopted because this affects managers ability to deal with changing circumstances. Suggestions concerning performance evaluation were not adopted for the following reasons. Require highest level performers to be exceptional in all aspects of their performance: this seems like a reasonable requirement for this program, however, DHRM feels that this type of standard is best set by the agency. The entire performance management program is designed to be administered by agencies. DHRM is only concerned with writing rules which keep them within acceptable legal parameters. This allows agencies a very broad range of possible methods for recognizing and rewarding employees according to the needs and unique environments that exist in state government. Sick leave abuse is a performance issue and rightfully belongs in a discussion of an employee's overall performance. The discipline of managers who fail to submit performance evaluations is better left to agencies. DHRM has no authority to discipline employees. This is given to agencies in Section 67-19-9. Limiting corrective action to just three actions was not adopted. This item was seriously considered but after consultation with DHRM staff and the Attorney General, it was decided that it takes away too many options and restricts management flexibility. There are times, for example, when an effective corrective action does not need to include all three of the required actions. Plus, to require a fixed response in all situations wraps an informal process in red tape and severely limits its effectiveness. Changing the term "sexual harassment" to unlawful Harassment" is a technical legal suggestion and DHRM was advised by attorneys at the time not to adopt the suggestion.

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AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-11
Discipline

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24944
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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 67-19-18 requires that the Department of Human Resource Management (DHRM) write rules governing disciplinary processes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Little input was received concerning this important rule over the past five years. Most came from the Utah Public Employees' Association who mainly wanted to limit management discretion in the imposition of discipline. These included a request to require all discretionary elements be present before discipline can be imposed and that corrective action be required prior to the imposition of any discipline. Agencies suggested that another reason for discipline be added, i.e., "no longer meets the requirements for the position." This came from the Attorney General to cover employees who fail to maintain licensure or certification. This was adopted.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule fulfills DHRM's responsibility to write rules governing the disciplinary process. This is an important and technical part of the due process protections afforded to employees by the career service system. Failure to set statewide standards leaves the state open to serious liability. The suggestions to limit management discretion were not adopted for the following reasons. Requiring all discretionary elements to be present is an excessive burden on management and would result in few, if any, disciplinary actions. Each of these factors can stand on its own as a justification for discipline. Requiring corrective action before imposition of discipline would not allow management to discipline employees for infractions for which no corrective action is required such as insubordination or malfeasance.

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AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-12
Separations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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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: This rule is written under the general rulemaking authority granted to the Department of Human Resource Management (DHRM) in Section 67-19-6. This rule establishes procedures by which an employee is separated from state employment and thus contains important legal protections for employees and the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: All comments regarding this rule came from the Utah Public Employees' Association (UPEA). Their suggestions were two: allow employees in a reduction in force to retire early or be forced to retire, if eligible, and require bumping in a reduction in force. Bumping is the process by which a senior employee may take the position of a less senior employee for which he or she qualifies. The net result is that less senior employees are separated while more senior employees keep their jobs.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Separation from employment is a major event for an employee and one that is frequently contested if forced by the employer. As a result, a great deal of precedent has been established by the courts, especially for government merit systems. This rule addresses all the pertinent issues in order to protect both the employee's rights and the state's discretion to terminate. UPEA's suggestions to provide early retirement for employees in a reduction in force are inconsistent with law and administration policy. Employees cannot be forced to retire. The Governor has also issued a policy that the state executive branch will not participate in the early retirement program allowed by Utah Code.

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ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

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AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-13
Volunteer Programs

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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FILED: 06/11/2002, 14:44

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 67-20-8 requires the Department of Human Resource Management (DHRM) to establish a volunteer program for the state.

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 were received by DHRM in the past five years concerning this rule.

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 required by Section 67-20-8.

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Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
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DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Resource Management, Administration
R477-15
Unlawful Harassment Policy and Procedure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24947
FILED: 06/11/2002, 14:46

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: This rule is written under the general grant of rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: All written comment concerning this rule came in 2000 when the EEOC broadened their guidelines on sexual harassment to unlawful harassment. Agencies and the Division of Risk Management suggested the state follow suit which we did in July of the same year.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Originally this rule was written to address legal liability the state was facing concerning sexual harassment suits. When the EEOC broadened sexual harassment to unlawful harassment, the state did the same under advice of the Division of Risk Management and legal counsel. This is an important rule that protects employees from harassing behavior. It also protects the state from costly legal action.

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HUMAN RESOURCE MANAGEMENT
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Room 2120 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:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

EFFECTIVE: 06/11/2002

Human Services, Substance Abuse
R544-1
Division Rules of Administration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24924
FILED: 06/05/2002, 12:11

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: In Section 62A-8-109, the Board of Substance Abuse is granted authority to establish a funding formula that allocates funds to the Local Substance Abuse Authorities. Rule R544-1 sets forth the formula developed to allocate funds among the Local Substance Abuse Authorities to provide substance abuse treatment services throughout Utah.

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 or complaints have been received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued to ensure that substance abuse treatment services are provided in accordance with the intent of the Utah State Legislature. Also, in this year's legislative session, many legislators supported a bill that would combine the Division of Substance Abuse with the Division of Mental Health. Although the bill failed, the issue was placed on an interim study list (item #72 on the Master Study Resolution "Consolidation of Health Services-to study whether to combine the Division of Substance Abuse with the Division of Mental Health). If the interim study recommends substantive changes to the

Division of Substance Abuse, it is likely that the rules would have to be revised. In light of this ongoing discussion, the Division of Substance Abuse has determined that the public would best be served if the existing rule is continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SUBSTANCE ABUSE
Room 201
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Kelsey at the above address, by phone at 801-538-4305, by FAX at 801-538-4696, or by Internet E-mail at bkelsey@utah.gov

AUTHORIZED BY: Patrick Fleming, Director

EFFECTIVE: 06/05/2002

Human Services, Youth Corrections
R547-6
Youth Parole Authority Policies and Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24919
FILED: 06/04/2002, 17:04

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: Sections 62A-7-109 through 62A-7-115 created within the Division of Youth Corrections a Youth Parole Authority, composed of 10 part-time members and 5 pro tempore members. The authority will: determine eligibility, conditions, and parole dates for youth offenders; determine revocation of parole; and determine discharge of the parolee based on policies approved by the board.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division continues to be responsible for the operation of the Youth Parole Authority.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
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DIRECT QUESTIONS REGARDING THIS RULE TO:
Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov

AUTHORIZED BY: Blake Chard, Director

EFFECTIVE: 06/04/2002

Human Services, Youth Corrections
R547-13
Guidelines for Admission to Secure Youth Detention Facilities

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24920
FILED: 06/04/2002, 17:14

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 62A-7-104(3)(a) and Section 62A-7-205 require the division to disseminate information on the statewide guidelines for admission to secure and home detention.

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 were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division continues to use these guidelines as required to admit youth into secure detention facilities.

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HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Blake Chard, Director

EFFECTIVE: 06/04/2002

Natural Resources, Wildlife Resources
R657-4
Possession of Live Game Birds

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24960
FILED: 06/13/2002, 15:53

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: Under Sections 23-13-4, 23-14-18, and 23-14-19, the Wildlife Board is authorized to adopt rules for the possession, importation, purchase, propagation, sale, barter, trade, or disposal of live game birds.

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 Division of Wildlife Resources and the Wildlife Board have not received written comments, either in support of or opposition to Rule R657-4, Possession of Live Game Birds. The Division of Wildlife Resources and the Wildlife Board have received several verbal comments during the public meetings, both in support and opposition to Rule R657-4, Possession of Live Game Birds. Verbal comment received during the last five-year review specifically regarded dog trials and dog training using game birds. As a result, the Division of Wildlife Resources proposed a new rule to the Regional Advisory Councils and the Wildlife Board to remove the provisions regarding dog trials and dog training using game birds from Rule R657-4 and incorporated those provisions into Rule R657-46, The Use of Game Birds in Dog Field Trials and Training. Both written and verbal comments received opposing the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-4 provides the procedures and requirements for the possession, importation, purchase, propagation, sale, barter, trade, or disposal of live game birds. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 06/13/2002

Natural Resources, Wildlife Resources
R657-6
Taking Upland Game

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24961
FILED: 06/13/2002, 15:53

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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 Division of Wildlife Resources and the Wildlife Board have received several comments, both in support and opposition to Rule R657-6, Taking Upland Game. Generally, the written comments involved supporting waiting periods for both Rio Grande and Merriam turkeys, including increasing the number of years for the waiting period from two to five years. Other comments included a bonus point system for obtaining wild turkey permits, general support of limited entry hunting, and special bow hunting proposals for Forest Grouse hunting. The Division of Wildlife Resources and the Wildlife Board have received several verbal comments during the public meetings, both in support and opposition to Rule R657-6. Verbal comment received during the last five-year review specifically regarded hunting seasons and hunt areas for Sandhill Crane, including habitat, depredation, providing opportunity, redistributing population, and cooperative flyway management

of Sandhill Crane. Generally, the verbal comment received regarded Forest Grouse bow hunting, hunting seasons and hunting methods for Forest Grouse, hare and rabbit, successful reintroduction of turkeys in Utah, and increasing funding for managing turkeys and establishing conservation permits for this effort. Both written and verbal comments received opposing the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes and administrative record for this rule at the Division of Wildlife Resources. Written comments received opposing the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-6 provides the application procedures, standards, and requirements for taking upland game and Sandhill Crane. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of the upland game program.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 06/13/2002

Natural Resources, Wildlife Resources
R657-22
Commercial Hunting Areas

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24910
FILED: 06/03/2002, 17:29

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: Under Section 23-17-6, the Wildlife Board is authorized to make rules and regulations concerning the operation of commercial hunting areas.

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 Division of Wildlife Resources and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-22. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's (RACs) and Wildlife Board's agenda for review and discussion during the review process for taking public input. Comments made during the public RAC and Wildlife Board meetings are in support of this rule. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources. The procedures and requirements adopted in this rule are effective and efficient.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-22 provides the procedures and requirements for establishing, maintaining, and operating a commercial hunting area. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of the commercial hunting area program.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 06/03/2002

Natural Resources, Wildlife Resources
R657-30
Fishing License for the Terminally Ill

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24922
FILED: 06/05/2002, 11:57

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 23-19-36 authorizes a resident who is terminally ill, and has less than five years to live, to receive a free fishing license. Rule R657-30 provides the procedures for a terminally ill person to obtain a free fishing license.

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 Division of Wildlife Resources has not received written comments, either in support or opposition to Rule R657-30. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's (RACs) and Wildlife Board's agenda for review and discussion during the review process for taking public input. The procedures and requirements adopted in this rule are effective and efficient.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-30 is necessary to provide an effective and efficient process for issuing free fishing licenses to persons who are terminally ill.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 06/05/2002

Public Safety, Fire Marshal
R710-1
Concerns Servicing Portable Fire Extinguishers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24929
FILED: 06/10/2002, 13:20

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 53-7-204 directs the Utah Fire Prevention Board to make rules establishing minimum standards to regulate the sale and servicing of portable fire extinguishers in the interest of safeguarding lives and property.

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 R710-1 has been amended four times since the last five-year review was completed. The last substantive amendments went into effect on May 20, 2002. The only written comments received during the last five-year period were for the proposed amendment that required concerns servicing portable fire extinguishers to demonstrate proof with the yearly application for a license that the company carried a minimum of $300,000 in public liability insurance. This amendment went into effect on September 1, 1998. This requirement generated three written letters to the Utah Fire Prevention Board, two stating concern that their company would need to provide insurance for only completing their own fire extinguishers. The other letter requested that the $300,000 be increased to a higher amount because the company felt it wasn't enough.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There are approximately 100 companies that service portable fire extinguishers and are licensed in the State of Utah. Portable fire extinguishers are the first line of defense against a small fire. This rule, along with the statute, provides a reasonable degree of assurance that when the fire extinguisher is needed it will work as designed. With regard to the three letters generated on the public liability insurance, the two companies that serviced only their own fire extinguishers were allowed to provide proof of their overall liability coverage that more than satisfied the original requirement. The Fire Prevention Board decided to leave the public liability insurance at the same rate required by the Division of Professional Licensing (DOPL), which is $300,000, to maintain consistency and fairness throughout the state. This rule is necessary to continue to guarantee that portable fire extinguishers properly work in an emergency when needed.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

EFFECTIVE: 06/10/2002

Public Safety, Fire Marshal
R710-2
Rules Pursuant to the Utah Fireworks Act

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24949
FILED: 06/11/2002, 16:11

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: Rule R710-2 is enacted by authority of Sections 53-7-220 through 53-7-225. In Section 53-7-204, the Utah Fire Prevention Board is authorized to enact rules to regulate the placement and discharge of display fireworks, minimum standards for the retail storage, and sale of fireworks, and establishing proof of competence for an individual to place and discharge display fireworks.

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 R710-2 was first enacted in 1983. Since the last five-year review, this rule has been substantively amended four times. The last substantive amendment went into effect on January 2, 2002. The only written comment received during the last five-year period was one letter for the proposed amendments that required changing the term of "pre-packaged fireworks", the "displaying of pre-packaged fireworks", and the "required illumination for temporary structures". This amendment went into effect on February 1, 2000.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Fireworks that are illegal or improperly used can cause physical harm to the human user as well as cause a number of different types of fires that can lead to tremendous property damage. The letter received about proposed changes to pre-packaged fireworks and their display, and the illumination for temporary structures was well received by the Fire Prevention Board and the majority of the recommendations in the letter was incorporated into the rule amendments. The authors of the letter were very pleased with the final rule. The continuation of this rule is necessary to provide safety in the retail sale of state-approved fireworks, storage of fireworks, and the proper display of Class B fireworks.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

EFFECTIVE: 06/11/2002

Public Safety, Fire Marshal
R710-4
Buildings Under the Jurisdiction of the State Fire Prevention Board

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24950
FILED: 06/12/2002, 07:52

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 53-7-204 specifically authorizes the Fire Prevention Board to enact rules to establish minimum standards for the prevention of fire and for the protection of life and property against fire and panic in state-owned facilities, institutional occupancies, public and private schools, colleges and universities, and other places of assembly.

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 R710-4 was first enacted January 1, 1978. Since the last five-year review this rule has been amended seven times with the last amendment going into effect on January 2, 2002. There have been no written comments received during the last five-year review period with regard to the proposed rule amendments. It has been the policy of the Fire Prevention Board to notify all involved of proposed amendments to the rule and invite participation by those affected individuals or businesses. This policy has proven very successful in the fact that consensus is normally achieved before the enactment of the rule is completed and letters are rarely written.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R710-4 provides a minimum degree of fire and life safety in any publicly-owned building, public and private schools, colleges and universities, institutional occupancies to include asylums, jails, prisons, hospitals, and any place of assembly where 50 or more people may gather for amusement, entertainment, instruction or education. This rule has tremendous impact on fire and life safety in many occupancies throughout the State of Utah, where people gather together in assemblage, are restricted to leave a facility as they desire by restraint or impairment, or where children are gathered together for educational purposes or day care.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

EFFECTIVE: 06/12/2002

Public Safety, Fire Marshal
R710-7
Concerns Servicing Automatic Fire Suppression Systems

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24933
FILED: 06/11/2002, 14:34

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: Section 53-7-204 directs the Utah Fire Prevention Board to make rules establishing minimum standards to regulate the servicing of automatic fire suppression systems in the interest of safeguarding lives and property.

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 R710-7 has been amended five times since the last five-year review was completed. Four of the amendments were substantive and one was nonsubstantive. The last substantive amendment went into effect on May 20, 2002. The only written comments received during the last five-year period were for the proposed amendment that required concerns servicing automatic fire suppression systems to demonstrate proof with the yearly application for a license that the company carried a minimum of $300,000 public liability insurance. This amendment went into effect on September 1, 1998. The requirement for public liability insurance generated one letter of concern which was that the limit of $300,000 should be raised to a higher limit to provide greater protection.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There are 33 companies licensed in the State of Utah that service automatic fire suppression systems. Automatic fire suppression systems are the first line of defense if a grill, oil-based cooking system, or hood overheats or fails. The majority of hood system fires are extinguished by the automatic fire suppression system before the fire department ever arrives. With regard to the letter received on the public liability insurance that requested the $300,000 limit be raised, the Fire Prevention Board decided to leave the public liability insurance at the same rate required by the Division of Professional Licensing (DOPL) to maintain consistency and fairness throughout the state. This rule is necessary to continue to guarantee that automatic fire suppression systems properly work in an emergency when needed.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

EFFECTIVE: 06/11/2002

Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire Prevention Law

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24951

FILED: 06/12/2002, 08:40

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 53-7-204 specifically authorizes the enactment of rules for adopting a nationally recognized fire code and the specific edition of that code, amending that adopted fire code, deputizing special deputy state fire marshals, direction and conduct of board meetings, enforcement of State Fire Marshal rules, firefighter training, and fire academy funding and guidelines.

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 R710-9 was first enacted July 27, 1992. Since the last five-year review, this rule has been amended six times with the last amendment going into effect on January 2, 2002. There have been no written comments received during the last five-year period with regard to proposed rule amendments. It has been the policy of the Fire Prevention Board to notify all involved of proposed amendments to the rule and invite participation by those affected individuals or businesses. This policy has proven very successful in the fact that consensus is normally achieved before the enactment of the rule is completed and letters are seldom received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R710-9 adopts the International Fire Code (IFC) which has been legislatively mandated for towns, cities, counties, fire protection districts, and the State of Utah to be the state fire code. It is also the rule that sets procedures to amend the IFC, local ordinance requirements, specific conduct of Board members at Board meetings, procedures to deputize special deputy state fire marshals, enforcement of rules of the Board, the setting of standards for firefighter training, and the enactment of the fire academy curriculum and oversight. This is a very necessary rule to provide a common statewide fire standard for the citizens of our state.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

EFFECTIVE: 06/12/2002

End of the Five-Year Notices of Review and Statements of Continuation Section

Notices of Rule Effective Dates Begin on the Following Page

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

Agriculture and Food
Animal Industry
No. 24689 (AMD): R58-18. Elk Farming.
Published: May 1, 2002
Effective: June 3, 2002

Commerce
Occupational and Professional Licensing
No. 24650 (AMD): R156-56-704. Statewide Amendments to the IBC.
Published: April 15, 2002
Effective: July 1, 2002

No. 24653 (AMD): R156-56. Utah Uniform Building Standard Act Rules.
Published: April 15, 2002
Effective: July 1, 2002

No. 24652 (AMD): R156-56. Utah Uniform Building Standard Act Rules.
Published: April 15, 2002
Effective: July 1, 2002

Environmental Quality
Radiation Control
No. 24716 (AMD): R313-22-33. Specific Licenses.
Published: May 1, 2002
Effective: June 14, 2002

Solid and Hazardous Waste
No. 24703 (AMD): R315-301-2. Definitions.
Published: May 1, 2002
Effective: June 15, 2002

No. 24704 (AMD): R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
Published: May 1, 2002
Effective: June 15, 2002

No. 24706 (AMD): R315-303. Landfilling Standards.
Published: May 1, 2002
Effective: June 15, 2002

No. 24707 (AMD): R315-305. Class IV Landfill Requirements.
Published: May 1, 2002
Effective: June 15, 2002

No. 24708 (AMD): R315-308. Ground Water Monitoring Requirements.
Published: May 1, 2002
Effective: June 15, 2002

No. 24709 (AMD): R315-310. Permit Requirements for Solid Waste Facilities.
Published: May 1, 2002
Effective: June 15, 2002

No. 24710 (AMD): R315-315. Special Waste Requirements.
Published: May 1, 2002
Effective: June 15, 2002

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 24700 (AMD): R414-1-6. Services Available.
Published: May 1, 2002
Effective: June 1, 2002

Insurance
Administration
No. 24712 (R&R): R590-102. Insurance Department Fee Payment Deadlines.
Published: May 1, 2002
Effective: June 7, 2002

Natural Resources
Wildlife Resources
No. 24714 (AMD): R657-27. License Agent Procedures.
Published: May 1, 2002
Effective: June 3, 2002

Transportation
Preconstruction, Right-of-Way Acquisition
No. 24687 (NEW): R933-5. Utah--Federal Agreement for the Control of Outdoor Advertising.
Published: May 1, 2002
Effective: June 4, 2002

Rules Index Begins on the Following Page

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 2, 2002, including notices of effective date received through June 14, 2002, the effective dates of which are no later than July 1, 2002. 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: Due to space constraints, neither Index will be printed in this issue of the Bulletin.

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/).