

**R15. Administrative Services, Administrative Rules.****R15-4. Administrative Rulemaking Procedures.****R15-4-1. Authority and Purpose.**

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

**R15-4-2. Definitions.**

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "eRules" means the Division's administrative rule filing application that agencies use to file rules and notices;

(g) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(h) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(2)(b).

**R15-4-3. Publication Dates and Deadlines.**

(1) For the purposes of Subsections 63G-3-301(2) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

**R15-4-4. Thirty-day Comment Period for a Proposed Rule****and a Change in Proposed Rule.**

(1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

**R15-4-5a. Notice of the Effective Date for a Proposed Rule.**

(1)(a) Pursuant to Subsection 63G-3-301(9), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

**R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.**

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the rule text as published is the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the division or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a

subsequent notice in the bulletin.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

#### **R15-4-6. Nonsubstantive Changes in Rules.**

(1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

#### **R15-4-7. Substantive Changes in Proposed Rules.**

(1) Pursuant to Section 63G-3-303, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63G-3-102(19);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63G-3-303(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

#### **R15-4-8. Temporary 120-day Rules.**

(1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).

(a) The division interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

#### **R15-4-9. Underscoring and Striking Out.**

(1) (a) Pursuant to Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with

regular rulemaking procedures to make the change.

**R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.**

(1) Pursuant to Subsections 63G-3-301(3), 63G-3-303(1), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

**KEY: administrative law**

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**63G-3-301**

**63G-3-303**

**63G-3-304**

**63G-3-402**

**R37. Administrative Services, Risk Management.****R37-2. Risk Management State Workers' Compensation Insurance Administration.****R37-2-1. Purpose.**

The purpose of this rule is to establish the responsibilities and guidelines governing the acquisition and administration of workers' compensation insurance, the allocation of costs and the required activities or actions of covered agencies utilizing this coverage.

**R37-2-2. Authority.**

This rule is established pursuant to Section 63A-4-101 which authorizes the State's Risk Manager to recommend rules to the Department Director who is authorized to enact rules; and Subsection 63A-4-101(2)(a) which authorizes the State's Risk Manager to acquire and administer workers' compensation insurance for the state.

**R37-2-3. Workers' Compensation Costs Allocation.**

The State's Risk Manager shall allocate workers' compensation insurance costs to state entities on the basis of an equitable and actuarially sound distribution of costs. The Risk Manager shall collect these funds through the state's payroll process. The following factors may be considered in developing this allocation:

- (1) Covered entity injured workers' compensation claims and accident history and trends.
- (2) Covered entity participation in preferred provider programs designated by the Risk Manager.
- (3) Covered entity safety, loss prevention and loss control programs.
- (4) Covered entity disability prevention efforts.
- (5) Covered entity injured worker temporary transitional duty, and return to work programs.
- (6) Covered entity case consultation and cooperation with Risk Management.
- (7) Covered entity payroll by rate classification.

**R37-2-4. Expenditure of Workers' Compensation Collections.**

The expenditure of collected funds shall be made with the approval of the Risk Manager. In addition to other activities which reduce the overall workers' compensation costs to the state, the collected funds may be expended for:

- (1) Workers' Compensation Insurance premiums for state entities.
- (2) Work site modification and assistive technology to return injured employees to work.
- (3) Employee safety and loss control programs.
- (4) Disability and injury prevention programs.
- (5) Claims management systems.
- (6) Claims information systems.

**R37-2-5. Preferred Provider Program.**

The Risk Manager may designate a preferred provider program developed by the state's workers compensation insurer, or a preferred provider program developed by Risk Management. Additional contracted facilities or providers may be designated by the Risk Manager. Any designated program shall be in accordance with statutes and rules governing such workers' compensation programs. If the Risk Manager designates any preferred provider program or additional contracted facility or providers state entities shall notify employees of them and require their use by employees for initial treatment.

**R37-2-6. Temporary Transitional Duty.**

Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure

that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

**R37-2-7. Agency Notice and Other Requirements.**

All state entities shall do the following with respect to any employee or volunteer injury:

(1) Provide immediate notification to Risk Management through a phone call, E-mail, or facsimile, when any of the following conditions occur:

- (a) Serious injury.
- (b) An injury which is questionable or appears to be fraudulent.
- (c) An accident involving the death of an employee.
- (d) An accident where a third party action caused the accident, death or injury.

(2) Notify the Division of Industrial Accidents of the Utah State Labor Commission of incidents, as required by Subsection 34a-2-407(4).

(3) Within seven days of an employee injury, complete a "First Report of Injury Form" provided by Risk Management.

(4) Distribute copies of the "First Report of Injury Form", as indicated on the form, to the Division of Industrial Accidents of the Labor Commission, the state's Workers' Compensation insurer, Risk Management, and the injured employee.

**KEY: risk management, workers compensation**

**June 23, 2008**

**63A-4-201**

**Notice of Continuation June 8, 2007**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rule of the Division of Occupational and Professional Licensing.**

**R156-1-101. Title.**

This rule is known as the General Rule of the Division of Occupational and Professional Licensing.

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or this rule:

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

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

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

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

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

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

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

(9) "Duplicate license" means a license reissued to replace

a license which has been lost, stolen, or mutilated.

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer, or if both the Division regulatory and compliance officer and the designated bureau manager are unable to so serve for any reason, a department administrative law judge.

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

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

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

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

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

- (iii) resignation prior to disciplinary proceedings;
  - (iv) failure of injured client to complain; and
  - (v) complainant's recommendation as to sanction.
- (17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).
- (18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).
- (19) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.
- (20) "Probation" means disciplinary action placing terms and conditions upon a license;
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or
  - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (21) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.
- (22) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.
- (23) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.
- (24) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.
- (25) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.
- (26) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or
  - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (27) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.
- (28) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.
- (29) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.
- (30) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.
- (31) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.
- (32) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

- (a) Division concerns;
- (b) allegations upon which those concerns are based;
- (c) potential for administrative or judicial action; and
- (d) disposition of Division concerns.

#### **R156-1-102a. Global Definitions of Levels of Supervision.**

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

#### **R156-1-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58.

#### **R156-1-106. Division - Duties, Functions, and Responsibilities.**

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political

subdivision, the federal government, another state, or a not-for-profit regulatory association to which the division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a), the division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the division, if the reason for the request is deemed by the division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

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

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

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

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

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

#### **R156-1-109. Presiding Officers.**

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

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

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department

administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h),(j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (c), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

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

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in

Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal

resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in this rule; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (f), and (o) and R156-46b-202(2)(d) and (e).

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

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

#### **R156-1-110. Issuance of Investigative Subpoenas.**

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



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

(b) Approved subpoenas shall be issued under the seal of the division and the signature of the subpoena authority.

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

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

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

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

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

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

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

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

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

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

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

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

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform

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

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

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

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

**R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.**

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the division's Internet Renewal System.

**R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.**

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(17);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition has occurred;

(8) the current criminal probationary or parole status of the applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any

regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) audiologist;
- (c) certified nurse midwife;
- (d) certified public accountant emeritus;
- (e) certified registered nurse anesthetist;
- (f) certified court reporter;
- (g) certified social worker;
- (h) chiropractic physician;
- (i) clinical social worker;
- (j) contractor;
- (k) deception detection examiner;
- (l) deception detection intern;
- (m) dental hygienist;
- (n) dentist;
- (o) direct-entry midwife;
- (p) genetic counselor;
- (q) health facility administrator;
- (r) hearing instrument specialist;
- (s) licensed substance abuse counselor;
- (t) marriage and family therapist;
- (u) naturopath/naturopathic physician;
- (v) optometrist;
- (w) osteopathic physician and surgeon;
- (x) pharmacist;
- (y) pharmacy technician;
- (z) physician assistant;
- (aa) physician and surgeon;
- (bb) podiatric physician;
- (cc) private probation provider;
- (dd) professional counselor;
- (ee) professional engineer;
- (ff) professional land surveyor;
- (gg) professional structural engineer;
- (hh) psychologist;
- (ii) radiology practical technician;
- (jj) radiology technologist;
- (kk) security personnel;
- (ll) speech-language pathologist; and
- (mm) veterinarian.

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

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

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

(6) An inactive license may be activated by requesting

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

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

**R156-1-308a. Renewal Dates.**

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

TABLE  
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Alternate Dispute Resolution Provdr	September 30	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years
(7) Audiologist	May 31	odd years
(8) Barber	September 30	odd years
(9) Barber School	September 30	odd years
(10) Building Inspector	November 30	odd years
(11) Burglar Alarm Security	November 30	even years
(12) C.P.A. Firm	September 30	even years
(13) Certified Court Reporter	May 31	even years
(14) Certified Dietitian	September 30	even years
(15) Certified Nurse Midwife	January 31	even years
(16) Certified Public Accountant	September 30	even years
(17) Certified Registered Nurse Anesthetist	January 31	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Social Worker	September 30	even years
(21) Construction Trades Instructor	November 30	odd years
(22) Contractor	November 30	odd years
(23) Controlled Substance Precursor Distributor	May 31	odd years
(24) Controlled Substance Precursor Purchaser	May 31	odd years
(25) Controlled Substance Handler	May 31	odd years
(26) Cosmetologist/Barber	September 30	odd years
(27) Cosmetology/Barber School	September 30	odd years
(28) Deception Detection	November 30	even years
(29) Dental Hygienist	May 31	even years
(30) Dentist	May 31	even years
(31) Direct-entry Midwife	September 30	odd years
(32) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(33) Electrologist	September 30	odd years
(34) Electrology School	September 30	odd years
(35) Environmental Health Scientist	May 31	odd years
(36) Esthetician	September 30	odd years
(37) Esthetics School	September 30	odd years
(38) Factory Built Housing Dealer	September 30	even years
(39) Funeral Service Director	May 31	even years
(40) Funeral Service Establishment	May 31	even years
(41) Genetic Counselor	September 30	even years
(42) Health Facility Administrator	May 31	odd years
(43) Hearing Instrument Specialist	September 30	even years
(44) Landscape Architect	May 31	even years
(45) Licensed Practical Nurse	January 31	even years
(46) Licensed Substance Abuse Counselor	May 31	odd years
(47) Marriage and Family Therapist	September 30	even years
(48) Massage Apprentice, Therapist	May 31	odd years
(49) Master Esthetician	September 30	odd years
(50) Medication Aide Certified	March 31	odd years
(51) Nail Technologist	September 30	odd years

(52)	Nail Technology School	September 30	odd years
(53)	Naturopath/Naturopathic Physician	May 31	even years
(54)	Occupational Therapist	May 31	odd years
(55)	Occupational Therapy Assistant	May 31	odd years
(56)	Optometrist	September 30	even years
(57)	Osteopathic Physician and Surgeon	May 31	even years
(58)	Outfitter/Hunting Guide	May 31	even years
(59)	Pharmacy (Class A-B-C-D-E) Pharmacist	September 30	odd years (60)
(61)	Pharmacy Technician	September 30	odd years
(62)	Physical Therapist	May 31	odd years
(63)	Physical Therapist Assistant	May 31	odd years
(64)	Physician Assistant	May 31	even years
(65)	Physician and Surgeon	January 31	even years
(66)	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
(67)	Podiatric Physician	September 30	even years
(68)	Pre Need Funeral Arrangement Provider	May 31	even years
(69)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(70)	Private Probation Provider	May 31	odd years
(71)	Professional Counselor	September 30	even years
(72)	Professional Engineer	March 31	odd years
(73)	Professional Geologist	March 31	odd years
(74)	Professional Land Surveyor	March 31	odd years
(75)	Professional Structural Engineer	March 31	odd years
(76)	Psychologist	September 30	even years
(77)	Radiology Practical Technician	May 31	odd years
(78)	Radiology Technologist	May 31	odd years
(79)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(80)	Registered Nurse	January 31	odd years
(81)	Respiratory Care Practitioner	September 30	even years
(82)	Security Personnel	November 30	even years
(83)	Social Service Worker	September 30	even years
(84)	Speech-Language Pathologist	May 31	odd years
(85)	Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division

and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(f) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(g) Vocational Rehabilitation Counselor licenses shall be issued for a one year term and are renewed annually.

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

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

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

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

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

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

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

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

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

#### **R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.**

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof

and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

**R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensure.**

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

**R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.**

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

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63G-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

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

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

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

(e) A notice of unconditional denial or partial denial of licensure to an applicant the division conditionally licensed, renewed, or reinstated shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reinstatement of licensure is requested;

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

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

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

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

(b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

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

(d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

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

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

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

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

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

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

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

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

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

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

(4) pay any fines or citations owed to the Division prior to the expiration of license.

**R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.**

An applicant for relicensure following revocation of licensure shall:

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

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

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

**R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.**

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

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

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

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

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

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

(d) pay any fines or citations owed to the Division prior to the surrender of license.

**R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.**

Except as otherwise governed by the terms of an order issued by the division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

**R156-1-310. Cheating on Examinations.**

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's

competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

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

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

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

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

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

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

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

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

(3) Action Upon Detection of Cheating.

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

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

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

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

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

(4) Notification.

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

**R156-1-404a. Diversion Advisory Committees Created.**

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

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

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

**R156-1-404b. Diversion Committees Duties.**

The duties of diversion committees shall include:

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

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

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

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

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

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

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

**R156-1-404d. Diversion - Procedures.**

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

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

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

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

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

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

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

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

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

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

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

**R156-1-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

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

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

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

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

**R156-1-503. Reporting Disciplinary Action.**

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

**KEY: diversion programs, licensing, occupational licensing, supervision**

**March 25, 2010**

**Notice of Continuation March 1, 2007**

**58-1-106(1)(a)**

**58-1-308**

**58-1-501(4)**

**R156. Commerce, Occupational and Professional Licensing.****R156-31b. Nurse Practice Act Rule.****R156-31b-101. Title.**

This rule is known as the "Nurse Practice Act Rule".

**R156-31b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Academic year", as used in Section R156-31b-601, means three quarters or two semesters or 900 clock hours. A quarter is defined to be equal to ten weeks and a semester is defined to be equal to 14 or 15 weeks.

(2) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the U.S. Department of Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

(3) "APRN" means an advanced practice registered nurse.

(4) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.

(5) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Subsection R156-31b-102(6);

(c) health related course work taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education; and

(d) training or educational presentations offered by the division.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program located within the state of Utah which meets the standards established in Sections R156-31b-601, 602 and 603; and any nursing education program located outside of Utah which meets the standards established in Section R156-31b-607.

(7) "CCNE" means the Commission on Collegiate Nursing Education.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "COA", as used in this rule, means the Council of Accreditation of Nurse Anesthesia Education Programs.

(10) "Clinical preceptor", as used in Section R156-31b-608, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent Nursing Education-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

(11) "Comprehensive nursing assessment", as used in Section R156-31b-704, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient conditions as well as emergent changes in patient's health status; recognizing alterations to previous patient conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's condition; evaluating the impact of nursing care; and using this broad and complete analysis to

make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(12) "Contact hour" means 60 minutes.

(13) "Delegatee", as used in Sections R156-31b-701 and 701a, means one or more competent persons receiving a delegation who acts in a complementary role to the delegating nurse, who has been trained appropriately for the task delegated, and whom the delegating nurse authorizes to perform a task that the delegates is not otherwise authorized to perform.

(14) "Delegation" means transferring to delegates the authority to perform a selected nursing task in a selected situation. The delegating nurse retains accountability for the delegation.

(15) "Delegator", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.

(16) "Diabetes medical management plan (DMMP)", as used in this rule, means an individualized plan that describes the health care services that the student is to receive at school. The plan is developed and signed by the student's parent or guardian and health care team. It provides the school with information regarding how the student will manage diabetes at school on a daily basis. The DMMP shall be incorporated into and shall become a part of the student's IHP.

(17) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to prescribing a prescription drug.

(18) "Disruptive behavior", as used in this rule, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

(19) "Equivalent to an approved practical nursing education program", as used in Subsection 58-31b-302(2)(e), means the applicant for licensure as an LPN by equivalency is currently enrolled in an RN education program with full approval status, and has completed course work which is equivalent to the course work of an NLNAC accredited practical nursing program.

(20) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(21) "Individualized healthcare plan (IHP)", as used in Section R156-31b-701a, means a plan for managing the health needs of a specific student, written and reviewed at least annually by a school nurse. The IHP is developed by a nurse working in a school setting in conjunction with the student and the student's parent or guardian to guide school personnel in the care of a student with medical needs. The plan shall be based on the student's practitioner's orders for the administration of medications or treatments for the student, or the student's DMMP.

(22) "Licensure by equivalency" as used in this rule means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

(23) "LPN" means a licensed practical nurse.

(24) "MA-C" means a medication aide - certified.



(25) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.

(26) "NLNAC" means the National League for Nursing Accrediting Commission.

(27) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(28) "Non-approved education program" means any foreign nurse education program.

(29) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

(30) "Nurse accredited", as used in this rule, means accreditation issued by NLNAC, CCNE or COA.

(31) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

- (a) advanced practice registered nurse;
- (b) certified nurse midwife;
- (c) chiropractic physician;
- (d) dentist;
- (e) osteopathic physician;
- (f) physician assistant;
- (g) podiatric physician;
- (h) optometrist;
- (i) naturopathic physician; or
- (j) mental health therapist as defined in Subsection 58-60-102(5).

(32) "Parent academic institution", as used in this rule, means the educational institution which grants the academic degree or awards the certificate of completion.

(33) "Parent nursing education-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

(34) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

(35) "Patient surrogate", as used in Subsection R156-31b-502(1)(d), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

(36) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(37) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

(38) "RN" means a registered nurse.

(39) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

(40) "Supervision", as used in this rule, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

(41) "Supervisory clinical faculty", as used in Section R156-31b-608, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical preceptors who provide the actual direct clinical experience.

(42) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

#### **R156-31b-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 31b.

#### **R156-31b-104. Organization - Relationship to Rule R156-1.**

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

#### **R156-31b-201. Board of Nursing - Membership.**

In accordance with Subsection 58-31b-201(1), nurses serving as members of the Board shall be:

- (1) six registered nurses, two of whom are actively involved in nursing education;
- (2) one licensed practical nurse; and
- (3) two advanced practice registered nurses.

#### **R156-31b-202. Advisory Peer Committee created - Membership - Duties.**

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Nursing Education Peer Committee.

(2) The duties and responsibilities of the Nursing Education Peer Committee are to:

- (a) review applications for approval of nursing education programs;
- (b) advise the board and division regarding standards for approval of nursing education programs; and
- (c) assist the board and division to conduct site visits of nursing education programs.

(3) The composition of the Nursing Education Peer Committee shall be:

- (a) five RNs or APRNs actively involved in nursing education; and
- (b) members of the board may also serve on this committee.

#### **R156-31b-301. License Classifications - Professional Upgrade.**

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

#### **R156-31b-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Sections 58-31b-302(2)(e) and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure as a LPN by equivalency shall submit written verification from a registered nurse education program with full approval status, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs who are not currently licensed in another state shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or

registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools for an applicant who is applying for licensure as a registered nurse; or

(b) Foundation for International Services, Inc. for an applicant who is applying for licensure as a licensed practical nurse.

**R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing in Psychiatric Mental Health Nursing.**

(1) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice (including mental health therapy).

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(b) The remaining 3,000 hours shall:

(i) include a minimum of 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental therapy services provided;

(ii) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(iii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3).

(c) At least 2,000 hours must be under the supervision of an APRN specializing in psychiatric mental health nursing. An APRN working in collaboration with a licensed mental health therapist may delegate selected clinical experiences to be supervised by that mental health therapist with general supervision by the APRN.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing in psychiatric mental health nursing under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(4)(g) by demonstrating that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three years immediately preceding the application for licensure.

**R156-31b-302c. Qualifications for Licensure - Examination Requirements.**

(1) An applicant for licensure under Title 58, Chapter 31b shall pass the applicable licensure examination within three years from the date of completion or graduation from a nursing

education program or four attempts whichever is sooner. An individual who does not pass the applicable licensure examination within three years of completion or graduation or four attempts is required to complete another approved nursing education program.

(2) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with the applicant's educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

(H) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(I) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing; or

(J) Psychiatric and Mental Health Nurse Practitioner (Adult and Family);

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the Oncology Nursing Certification Corporation Advanced Oncology Certified Nurse if taken on or before July 1, 2005;

(vi) one of the following examinations administered by the American Association of Critical Care Nurses Certification Corporation Inc.:

(A) the Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care; or

(B) the Acute Care Nurse Practitioner Certification;

(vii) the national certifying examination administered by the American Midwifery Certification Board, Inc.; or

(viii) the examination of the Council on Certification of Nurse Anesthetists.

(3) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.

(4)(a) An applicant for certification as an MA-C shall pass the Utah Medication Aide Certification Examination with a score of 75% of greater; and

(b) the certification examination must be taken within six months of completion of the approved training program and cannot be taken more than two times without repeating an approved training program.

(5) The examinations required under this Section are national exams and cannot be challenged before the Division.

**R156-31b-302d. Qualifications for Licensure - Criminal Background Checks.**

(1) In accordance with Subsection 58-31b-302(5), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:

(a) a visa issued within six months of making application to Utah; or

(b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application

to Utah.

**R156-31b-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; or

(ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.

(c) An MA-C shall complete eight contact hours of approved continuing education related to medications or medication administration during the two years immediately preceding the application for renewal.

**R156-31b-304. Temporary Licensure.**

A temporary license issued in accordance with Section 58-1-303 to a graduate of a foreign nursing education program may be issued for a period of time not to exceed one year from the date of issuance and shall not be renewed or extended.

**R156-31b-306. Inactive Licensure, Reinstatement or Relicensure.**

(1) In accordance with Subsection 58-1-305(1), an individual seeking activation of an inactive RN or LPN license must document current competency to practice as a nurse as defined in Subsection (3) below.

(2) An individual seeking reinstatement of RN or LPN licensure or relicensure as a RN or LPN in accordance with Subsection R156-1-308g(3)(b), R156-1-308i(3), R156-1-308j(3) and R156-1-308k(2)(c) shall document current competence as defined in Subsection (3) below.

(3) Documentation of current competency to practice as a nurse is established as follows:

(a) an individual who has not practiced as a nurse for five years or less must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) an individual who has not practiced as a nurse for more than five years but less than eight years must pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure or successfully complete an approved re-entry program;

(c) an individual who has not practiced as a nurse for more than eight years but less than 10 years must pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure and successfully complete an approved re-entry program;

(d) an individual who has not practiced as a nurse for 10 years shall repeat an approved nursing education program and pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure.

(4) To document current competency for activation,

reinstatement or relicensure as an APRN, an individual must pass the required examinations as defined in Section R156-31b-302c and be currently certified or recertified in the specialty area.

**R156-31b-307. Reinstatement of Licensure.**

(1) In accordance with Section 58-1-308 and Subsection R156-1-308g(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

**R156-31b-308. Exemption from Licensure.**

In accordance with Subsections 58-1-307(1) and 58-31b-308(1)(a), an individual who provides up to 48 consecutive hours of respite care for a family member, with or without compensation, is exempt from licensure.

**R156-31b-309. Intern Licensure.**

(1) In accordance with Section 58-31b-306, an intern license shall expire the earlier of:

(a) 180 days from the date of issuance, unless the applicant is applying for licensure as an APRN specializing in psychiatric mental health nursing, then the intern license shall be issued for a period of one year and can be extended in one year increments not to exceed five years;

(b) 30 days after notification from the applicant or the examination agency, if the applicant fails the examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(3) It is the professional responsibility of the APRN Intern to inform the Division of examination results within ten calendar days of receipt and to cause to have the examination agency send the examination results directly to the Division.

**R156-31b-310. Licensure by Endorsement.**

(1) In accordance with Section 58-1-302, an individual who moves from a Nurse Licensure Compact party state does not need to hold a current license, but the former home state license must have been in good standing at the time of expiration.

(2) An individual under Subsection (1) who has not been licensed or practicing nursing for three years or more is required to retake the licensure examination to demonstrate good standing within the profession.

(3) An applicant for licensure by endorsement must have a current, active license in another state, or pass the required examinations as defined in Section R156-31b-302c, within six months prior to making application for licensure.

**R156-31b-401. Disciplinary Proceedings.**

(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended, may under Subsection 58-31b-401 petition the division at any time that the licensee can demonstrate that the licensee can resume competent practice.

(3) An individual who has had any license issued under Title 58, Chapter 31b revoked or surrendered two times or more as a result of unlawful or unprofessional conduct is ineligible to

apply for relicensure.

**R156-31b-402. Administrative Penalties.**

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

- (1) Using a protected title:  
initial offense: \$100 - \$300  
subsequent offense(s): \$250 - \$500
- (2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:  
initial offense: \$50 - \$250  
subsequent offense(s): \$200 - \$500
- (3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:  
initial offense: \$1,000 - \$3,000  
subsequent offense(s): \$5,000 - \$10,000
- (4) Practicing or attempting to practice nursing without a license or with a restricted license:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (5) Impersonating a licensee, or practicing under a false name:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (6) Knowingly employing an unlicensed person:  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,000 - \$5,000
- (7) Knowingly permitting the use of a license by another person:  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,000 - \$5,000
- (8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (11) Engaging in conduct that results in convictions of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime of moral turpitude or other crime:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:  
initial offense: \$500 - \$2,000

- subsequent offense(s): \$2,000 - \$10,000
- (16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (18) Practicing or attempting to practice as a nurse beyond the scope of licensure:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (20) Failure to safeguard a patient's right to privacy:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (22) Engaging in sexual relations with a patient:  
initial offense: \$5,000 - \$10,000  
subsequent offense(s): \$10,000
  - (23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:  
initial offense: \$200 - \$1,000  
subsequent offense(s): \$500 - \$2,000
  - (24) Unauthorized taking or personal use of nursing supplies from an employer:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (25) Unauthorized taking or personal use of a patient's personal property:  
initial offense: \$200 - \$1,000  
subsequent offense(s): \$500 - \$2,000
  - (26) Knowingly entering false or misleading information into a medical record or altering a medical record:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (27) Unlawful or inappropriate delegation of nursing care:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (28) Failure to exercise appropriate supervision:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (30) Failure to file or impeding the filing of required reports:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
  - (31) Breach of confidentiality:  
initial offense: \$200 - \$1,000  
subsequent offense(s): \$500 - \$2,000
  - (32) Failure to pay a penalty:  
Double the original penalty amount up to \$10,000
  - (33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$500 - \$2,000

(34) Failure to confine practice within the limits of competency:

initial offense: \$500 - \$1,000

subsequent offense(s): \$500 - \$2,000

(35) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(36) Engaging in a sexual relationship with a patient surrogate:

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$5,000 - \$10,000

(37) Engaging in practice in a disruptive manner:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000.

**R156-31b-502. Unprofessional Conduct.**

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(b) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise provided by law;

(c) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(ii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(iii) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;

(d) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nurse/patient relationship; and

(e) engaging in disruptive behavior in the practice of nursing.

(2) In accordance with a prescribing practitioner's order and an IHP, a nurse who follows the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a and delegates or trains an unlicensed assistive personnel to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

**R156-31b-601. Standards for Parent Academic Institution Offering Nursing Education Program.**

In accordance with Subsection 58-31b-601(2), the minimum standards that a parent academic institution offering a nursing education program must meet to qualify graduates for licensure under this chapter are as follows.

(1) The parent academic institution shall be legally authorized by the State of Utah to provide a program of education beyond secondary education.

(2) The parent academic institution shall admit as students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate.

(3) At least 10 percent of the parent academic institution's

revenue shall be from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(4) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an LPN shall:

(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the U.S. Department of Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation; and

(b) provide not less than one academic year program of study that leads to a certificate or recognized educational credential.

(5) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an RN shall:

(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the U.S. Department of Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation; and

(b) provide or require not less than a two academic year program of study that awards a minimum of an associate degree.

(6) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an APRN or APRN-CRNA shall:

(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the U.S. Department of Education and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation;

(b) admit as students, only persons having completed at least an associate degree in nursing or baccalaureate degree in a related discipline; and

(c) provide or require not less than a two academic year program of study that awards a minimum of a master's degree.

**R156-31b-602. Categories of Nursing Education Programs Approval Status.**

(1) Full approval status of a nursing program shall be granted and maintained by adherence to the following:

(a) current accreditation by the NLNAC, CCNE, or COA; and

(b) compliance with the standards established in Sections R156-31b-601 and 603 and the nurse accrediting body in which the program chooses to become accredited.

(2) The Division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(3) The Division may grant provisional approval status to a nursing education program for a period not to exceed two years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards established in Sections R156-31b-601 and 603; and

(d) is progressing in a timely manner to qualify for full approval status by obtaining accreditation from a nurse accrediting body.

(4)(a) A nursing education program seeking accreditation from NLNAC shall demonstrate progression toward accreditation and qualifying for full approval status by becoming a Candidate for Accreditation by the NLNAC no later than six months from the date of the first day a nursing course is offered.

(b) A program that fails to obtain NLNAC Candidacy Status as required in this Subsection shall:

- (i) immediately cease accepting any new students;
- (ii) the approval status of the program shall be changed to "Probationary" and if the program fails to become a Candidate for NLNAC accreditation within one year from the date of the first day a nursing course is offered, the program shall cease operation at the end of the current academic term such as at the end of the current semester or quarter; and
- (iii) a nursing education program that ceases operation under this Subsection, is eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

(5) A nursing education program that has been granted provisional approval status and fails to become accredited by a nurse accrediting body within two years of the first graduating class, shall cease operation at the end of the two year period of time and the academic term, such as a semester or quarter, of that time period.

(6) After receiving notification from a nurse accrediting body of a failed site visit or denied application for accreditation by the nurse accrediting body, a nursing education program on provisional approval status shall:

- (i) notify the Division and Board within 10 days of being notified of the failed site visit or denied application for accreditation;
- (ii) cease operation at the end of the current academic term; and
- (iii) be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

(7)(a) A nursing education program on provisional approval status shall schedule a nurse accreditation site visit no later than one calendar year from the graduation date of the first graduating class.

(b) A program that fails to schedule a site visit within one year of the first graduating class shall:

- (i) cease to accept any new students;
- (ii) no later than two years after the first graduating class, cease operation; and
- (iii) if ceasing operation under this Subsection, be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

#### **R156-31b-603. Nursing Education Program Standards.**

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter are set forth as follows.

(1) A nursing education program shall meet the following standards:

- (a) purposes and outcomes shall be consistent with the Nurse Practice Act and Rule and other relevant state statutes;
- (b) purposes and outcomes shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;
- (c) consumer input shall be considered in developing and evaluating the purpose and outcomes of the program;
- (d) the program shall implement a comprehensive,

systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(e) the curriculum shall provide diverse, integrated didactic and clinical learning experiences across the lifespan, consistent with program outcomes;

(f) the faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;

(g) the nursing program administrator shall be professionally and academically qualified as a registered nurse with institutional authority and administrative responsibility for the program;

(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(i) fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;

(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;

(k) the program shall meet all the criteria established in this rule;

(l) the program shall be an integral part of a parent academic institution which is accredited by an accrediting body that is recognized by the U.S. Secretary of Education; and

(m) the program shall require students to obtain general education, pre-requisite, and co-requisites courses from a regionally accredited institution of higher education, or have in place an articulation agreement with a regionally accredited institution of higher education; a current approved program has until January 1, 2010 to come into compliance with this standard.

(2) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:

- (a) students' achievement of program outcomes;
- (b) evidence of adequate program resources including fiscal, physical, human, clinical and technical learning resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;
- (c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;
- (d) evidence that accurate program information for consumers is readily available;
- (e) evidence that the head of the academic institution and the administration support program outcomes;
- (f) evidence that the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and
- (g) evidence that the academic institution assures security of student information.

(3) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:

- (a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;
- (b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;
- (c) learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan;

(d) coursework including, but not limited to:

- (i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;
- (ii) didactic content integrated with supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the life span and in a variety of clinical settings, to include:
  - (A) using informatics to communicate, manage knowledge, mitigate error and support decision making;
  - (B) employing evidence-based practice to integrate best research with clinical expertise and patient values for optimal care, including skills to identify and apply best practices to nursing care;
  - (C) providing patient-centered, culturally competent care:
    - (1) respecting patient differences, values, preferences and expressed needs;
    - (2) involving patients in decision-making and care management;
    - (3) coordinating and managing continuous patient care; and
    - (4) promoting healthy lifestyles for patients and populations;
  - (D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate patient care and health promotion; and
  - (E) participating in quality improvement processes to measure patient outcomes, identify hazards and errors, and develop changes in processes of patient care;
- (e) supervised clinical practice which includes development of skill in making clinical judgments, management and care of groups of patients, experience with interdisciplinary teamwork, working with families in the provision of care, managing crisis situations, and delegation to and supervision of other health care providers:
  - (i) clinical experience shall be comprised of sufficient hours, shifts, variety of populations, and hands-on practice to meet these standards, and ensure students' ability to practice at an entry level;
  - (ii) no more than 25% of the clinical hours can be obtained in a nursing skills laboratory, or by clinical simulation or virtual clinical excursions;
  - (iii) all student clinical experiences, including those with preceptors, shall be supervised by qualified nursing faculty at a ratio of not more than 10 students to one faculty member unless the experience includes students working with preceptors who can be supervised at a ratio of not more than 15 students to one faculty member; and
  - (iv) nursing faculty, must be on-site with students during all fundamental, medical-surgical and acute care clinical experiences;
- (f)(i) clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has completed didactic and clinical instruction in all foundational courses including introduction to nursing, fundamentals, medical-surgical, obstetrics, and pediatrics. Therefore, clinical preceptors shall not be utilized in LPN nursing programs.
  - (ii) a clinical preceptor shall:
    - (A) demonstrate competencies related to the area of assigned clinical teaching responsibilities;
    - (B) serve as a role model and educator to the student;
    - (C) be licensed as a nurse at or above the level for which the student is preparing;
    - (D) not be used to replace clinical faculty;
    - (F) be provided with a written document defining the functions and responsibilities of the preceptor;
    - (G) confer with the clinical faculty member and student for monitoring and evaluating learning experiences, but the clinical faculty member shall retain responsibility for student

learning; and

- (H) not supervise more than two students during any one scheduled work time or shift; and
- (g) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the division.

(4) Students rights and responsibilities:

- (a) opportunities to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight shall be provided to students;
- (b) all policies shall be written and available to students;
- (c) students shall be required to meet the health standards and criminal background checks as required in Utah;
- (d) students shall receive faculty instruction, advisement and oversight;
- (e) students shall maintain the integrity of their work;
- (f) (i) an applicant accepted into a nursing education program that has received provisional approval status from the Division, must sign a disclaimer form indicating the applicant's knowledge of the provisional approval status of the program, and the lack of a guarantee that the program will achieve national nursing accreditation and full approval status from the Division; and
- (ii) the disclaimer shall also contain a statement regarding the lack of a guarantee that the credit received from the provisionally approved program will be accepted by or transferable to another educational facility; and
- (g) an applicant accepted into a nursing education program or a student of a nursing education program that is on or receives probationary approval status from the Division, must sign a disclaimer form indicating the applicant or student has knowledge of the program's probationary approval status, and the lack of a guarantee that the program will maintain any approval status or will be able to offer the complete program.

(5) An administrator of a nursing education program shall meet the following requirements:

- (a) a program preparing an individual for licensure as an LPN:
  - (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
  - (ii) have a minimum of an earned graduate degree with a major in nursing, or a baccalaureate degree in nursing and an earned doctoral degree in a related discipline from a nurse accredited education program or regionally accredited institution;
  - (iii) have academic preparation in curriculum and instruction;
  - (iv) have at least three years of experience teaching in an accredited nursing education program;
  - (v) have knowledge of current LPN practice; and
  - (vi) have adequate time to fulfill the role and responsibilities of a program administrator;
- (b) a program preparing an individual for licensure as an RN:
  - (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
  - (ii)(A) associate degree program: have a minimum of an earned graduate degree with a major in nursing from a nurse accredited education program;
  - (B) baccalaureate degree program: have a minimum of an earned graduate degree in nursing and an earned doctorate in nursing or a related discipline from a nurse accredited program or regionally accredited institution;
  - (iii) have academic preparation in curriculum and instruction;
  - (iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current RN practice; and  
 (vi) have adequate time to fulfill the role and responsibilities of a program administrator;

(c) a program preparing an individual for licensure as an APRN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have a minimum of an earned graduate degree with a major in nursing and an earned doctorate in nursing or a related discipline from a nurse accredited program or regionally accredited institution;

(iii) have academic preparation in curriculum and instruction;

(iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current nursing practice;

(vi) have adequate time to fulfill the role and responsibilities of a program administrator; and

(v) if the program administrator is not a licensed APRN, then the program must also have a director that meets the qualifications of Subsection (d) below;

(d) the director of a graduate program preparing an individual for licensure as an APRN shall meet the following requirements:

(i) have a current, active, unencumbered APRN license or multistate privilege to practice as an APRN in Utah;

(ii) have a minimum of an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse accredited program;

(iii) have educational preparation in curriculum and instruction;

(iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current APRN practice; and

(vi) have adequate time to fulfill the role and responsibilities of a program director.

(6) The qualifications for nursing faculty who teach didactic, clinical, or in a skills practice laboratory, in a nursing education program shall include:

(a) a program preparing an individual for licensure as an LPN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have a baccalaureate degree in nursing or an earned graduate degree with a major in nursing from a nurse accredited program, the majority of faculty (at least 51%) shall have an earned graduate degree with a major in nursing from a nurse accredited program;

(iii) have at least two years of clinical experience;

(iv)(A) have educational preparation in curriculum and instruction; or

(B) have at least three years of experience teaching in an accredited nursing education program; and

(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;

(b) a program preparing an individual for licensure as an RN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have an earned graduate degree with a major in nursing from a nurse accredited program or be currently enrolled in a graduate level accredited nursing education program with graduation from the program no later than three years from the date of hire;

(iii) have at least two years of clinical experience;

(iv)(A) have educational preparation in curriculum and instruction; or

(B) have at least three years of experience teaching in an

accredited nursing education program; and

(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;

(c) a program preparing an individual for licensure as an APRN:

(i) have a current, active, unencumbered APRN license or multistate privilege to practice nursing in Utah;

(ii) have an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse accredited program or regionally accredited institution; the majority of the faculty shall have an earned doctorate from a regionally accredited institution;

(iii) have at least two years of clinical experience practicing as an APRN;

(iv)(A) have educational preparation in curriculum and instruction; or

(B) have at least three years of experience teaching in an accredited nursing education program; and

(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above.

(7) At the time this Rule becomes effective, any currently employed nursing program administrator or faculty member who does not meet the criteria established in Subsection (5) or (6), shall have until July 1, 2011 to meet the criteria.

(8) Adjunct clinical faculty, except clinical associates, employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching. A clinical associate is a staff member of a health care facility with an earned graduate degree or a student currently enrolled in a graduate nursing education program, who is given release time from the facility to provide clinical supervision to other students. The clinical associate is supervised by a graduate prepared mentor faculty member.

(9) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(10) A nursing education program preparing graduates for licensure as either an LPN or RN must maintain an average pass rate on the applicable NCLEX examination that is no more than 5% below the national average pass rate for the same time period.

(11) A program that has received full approval status from the Division in collaboration with the board and is accredited by either CCNE or NLNAC:

(a) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles or over a two year period of time, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation, and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs four times either after four consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after five consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases to operate under this Subsection, may submit a new application for



approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(12) A program that has been granted provisional approval status by the Division in collaboration with the Board, but has not received either CCNE or NLNAC accreditation:

(a) if a low NCLEX pass rate occurs after any one graduation cycle, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles, or a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after four consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases operation under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(13) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) the curriculum shall be consistent with nationally recognized APRN roles and specialties and shall include:

(i) graduate level advanced practice nursing core courses including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(ii) coursework focusing on the APRN role and specialty;

(c) dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties;

(d) instructional track/major shall have a minimum of 500 hours of supervised clinical experience directly related to the recognized APRN role and specialty;

(e) specialty tracks that provide care to multiple age groups and care settings shall require additional hours distributed in a manner that represents the populations served;

(f) there shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty;

(g) post-masters nursing students shall complete the requirements of the APRN masters program through a formal graduate level certificate or master level track in the desired role and specialty;

(i) a program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area; and

(ii) post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours; and

(h) a lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or

possessing an APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

#### **R156-31b-604. Nursing Education Program - Disciplinary Action.**

(1) The Division, in collaboration with the Board, may conduct an administrative hearing or issue a Memorandum of Understanding and Order placing a nursing program on probationary status for any of the following reasons:

(a) change in nurse accreditation status;

(b) failure to maintain the standards established by the nurse accreditation bodies such as receiving significant deficiencies during a review as evidenced by conditions being placed on the program;

(c) failure to maintain the standards established in this rule;

(d) pass rate of more than 5% below the national average;

(e) low graduation rate defined as the percent of first-time, degree seeking students who graduate longer than 150% of the designated time for graduation;

(f) sudden, high, or frequent faculty attrition;

(g) frequent program administrator turnover;

(h) national certification pass rate less than 80%; and

(i) implementation of a new education program, or an outreach or satellite nursing education program without prior notification to the Division.

(2) The Division, in collaboration with the Board, may take any of the following actions upon a nursing education program:

(a) issue an Order changing the approval status of the program;

(b) limit or restrict enrollment of new students or require the program to cease accepting new students within a specified timeframe;

(c) require the program director to meet with the Board or its designee, and present a remediation plan to correct any problems within a specified time frame;

(d) establish specific criteria that must be met within a specific length of time;

(e) withdraw approval status; or

(f) issue a cease and desist Order.

(3) Any adjudicative proceeding in regards to a nursing education program shall be classified as a formal adjudicative proceeding and shall comply with Title 63G, Chapter 4, the Utah Administrative Procedures Act.

#### **R156-31b-605. Nursing Education Program Notification of Change.**

(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the division for approval status at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.

#### **R156-31b-606. Nursing Education Program Surveys.**

(1) The Division shall conduct an annual survey of nursing education programs to monitor compliance with this rule. The survey may include the following:

(a) a copy of the program's annual report to a nurse accrediting body;

(b) a copy of any changes submitted to any nurse accrediting body; and

(c) a copy of any accreditation self study summary report.

(2) Programs which have been granted provisional approval status shall submit to the Division a copy of all correspondence between the program and the nurse accrediting

body within 10 days of receipt or submission.

**R156-31b-607. Approved Nursing Education Programs Located Outside of Utah.**

(1) In accordance with Section 58-31b-302, an approved nursing education program located outside of Utah must meet the following requirements in order for a graduate to meet the educational requirement for licensure in this state:

- (a) be accredited by the CCNE, NLNAC or COA; or
- (b) be approved by the Board of Nursing or an equivalent agency in the state in which the nursing education program is offered.

**R156-31b-608. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.**

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program which is located outside the state must meet to allow students to obtain clinical experiences in Utah are set forth as follows.

(1) An entry level distance learning nursing education program which leads to licensure utilizing precepted clinical experiences in Utah must meet the following criteria:

(a) parent nursing education-program must be Board of Nursing approved in the state of primary location (business), be nationally accredited by either NLNAC, CCNE, or COA, and must be affiliated with an institution of higher education;

(b) parent nursing education-program clinical faculty supervisor must be licensed in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed in good standing, in Utah or a Compact State;

(d) parent nursing education-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(e) parent nursing education-program must document compliance with the above stated criteria, along with a request to be approved to have a student who is exempt from licensure under Subsection 58-1-307(c).

(2) A nursing education program located in another state that desires to use Utah health care facilities for clinical experiences for one or more students must meet the following criteria:

(a) be approved by the home state Board of Nursing, be nationally accredited by NLNAC, CCNE, or COA and be affiliated with an institution of higher education;

(b) clinical faculty must be employed by the nursing education program, meet the requirements to be a faculty member as established by the accrediting body and the program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed, in good standing, in Utah or a Compact state;

(d) have a contract with the Utah health care facilities that provide the clinical sites;

(e) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing; and

(f) document compliance with the above stated criteria, along with a request to be approved to have a student(s) who is exempt from licensure under Subsection 58-1-307(c).

(3) A distance learning didactic nursing education program with a Utah based postsecondary school which provides tutoring services, facilitates clinical site selection, and provides clinical site faculty must meet the following criteria:

(a) parent nursing education-program must be approved by the Board of Nursing in the state of primary location (business), be nationally accredited by NLNAC, CCNE, or COA and must be affiliated with an institution of higher education;

(b) a formal contract must be in place between the parent nursing education-program and the Utah postsecondary school;

(c) parent nursing education-program and Utah postsecondary school must submit an application for program approval status by the Division of Occupational and Professional Licensing in collaboration with the Board of Nursing in Utah, utilizing the parent-program's existing curriculum. Approval status is granted to the parent nursing education-program, not to the postsecondary school;

(d) clinical faculty must be employed by the parent nursing education-program (this can be as a contractual faculty member), meet the requirements to be a faculty member as established by the accrediting body and the parent nursing education-program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(e) clinical faculty supervisor(s) located at the parent nurse education-program must be licensed, in Utah or a Compact state;

(f) parent nursing education-program shall be responsible for conducting the nursing education program, the program's policies and procedures, and the selection of the students;

(g) parent nursing education-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(h) the parent nursing education-program shall submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing.

**R156-31b-701. Delegation of Nursing Tasks.**

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients in all situations. The decision to delegate must be based on careful analysis of the patient's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

- (a) verify and evaluate the orders;
- (b) perform a nursing assessment, including an assessment of:

(i) the patient's nursing care needs including, but not limited to, the complexity and frequency of the nursing care, stability of the patient, and degree of immediate risk to the patient if the task is not carried out;

(ii) the delegatee's knowledge, skills, and abilities after training has been provided;

(iii) the nature of the task being delegated including the degree of complexity, irreversibility, predictability of outcome, and potential for harm;

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs; and

(v) the availability of adequate supervision of the delegatee.

(c) act within the area of the nurse's responsibility;

(d) act within the nurse's knowledge, skills and ability;

(e) determine whether the task can be safely performed by a delegatee or whether it requires a licensed health care provider;

(f) determine that the task being delegated is a task that a

reasonable and prudent nurse would find to be within generally accepted nursing practice;

(g) determine that the task being delegated is an act consistent with the health and safety of the patient;

(h) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(i) provide instruction and direction necessary to safely perform the specific task; and

(j) provide ongoing supervision and evaluation of the delegatee who is performing the task;

(k) explain the delegation to the delegatee and that the delegated task is limited to the identified patient within the identified time frame;

(l) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task; and

(m) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient;

(ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's condition, complexity of the task, ability of the proposed delegatee and other criteria as deemed appropriate by the nurse, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

(a) A delegatee shall not further delegate to another person the tasks delegated by the delegator; and

(b) the delegated task may not be expanded by the delegatee without the express permission of the delegator.

#### **R156-31b-701a. Delegation of Nursing Tasks in a School Setting.**

In addition to the delegation rule found in Section R156-31b-701, the delegation of nursing tasks in a school setting is further defined, clarified, or established as follows:

(1) Any task being delegated by the school nurse shall be identified within a current IHP. The IHP is limited to a specific delegatee for a specific time frame. Any unlicensed person who administers medication to a student as a delegatee of a school

nurse, must receive training from a school nurse at least annually.

(2) The action of a medication shall determine if the drug is appropriate to delegate the administration to an unlicensed person. Any medication with known, frequent side effects that can be life threatening shall not be delegated.

(3) Medications that require the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug shall not be administered by an unlicensed person.

(4) A nurse working in a school setting may not delegate the administration of the first dose of a new medication or a dosage change.

(5) A nurse may not delegate the administration of any medication which requires nursing assessment or judgment prior to or immediately after administration.

(6) The routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP:

(a) are not actions that require nursing assessment or judgment prior to administration; and

(b) may be delegated to a delegatee. Insulin and glucagon injections by the delegatee shall only occur when the delegatee has followed the guidelines of the IHP.

#### **R156-31b-702. Scope of Practice.**

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as an APRN may practice within the scope of practice of a RN under the APRN license.

(4) An individual licensed in good standing in Utah as either an APRN or a CRNA and residing in this state, may practice as an RN in any Compact state.

#### **R156-31b-703. Generally Recognized Scope of Practice of an LPN.**

In accordance with Subsection 58-31b-102(15), the LPN practicing within the generally recognized LPN scope of practice practices as follows:

(1) In demonstrating professional accountability, shall:

(a) practice within the legal boundaries for practical nursing through the scope of practice authorized in statute and rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(d) accept responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a focused nursing assessment;

(b) plan for episodic nursing care;

(c) demonstrate attentiveness and provides patient surveillance and monitoring;

(d) assist in identification of patient needs;

(e) seek clarification of orders when needed;

(f) demonstrate attentiveness and provides observation for signs, symptoms and changes in patient condition;

(g) assist in the evaluation of the impact of nursing care, and contributes to the evaluation of patient care;

(h) recognize patient characteristics that may affect the patient's health status;

(i) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implement appropriate aspects of patient care in a timely manner:

(i) provide assigned and delegated aspects of patient's health care plan;

(ii) implement treatments and procedures; and

(iii) administer medications accurately;

(k) document care provided;

(l) communicate relevant and timely patient information with other health team members including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies;

(iii) significant changes in patient condition; or

(iv) patient needs;

(m) participate in nursing management:

(i) assign nursing activities to other LPNs;

(ii) delegate nursing activities for stable patients to unlicensed assistive personnel;

(iii) observe nursing measures and provide feedback to nursing manager; and

(iv) observe and communicate outcomes of delegated and assigned activities;

(n) take preventive measures to protect patient, others and self;

(o) respect patient's rights, concerns, decisions and dignity;

(p) promote a safe patient environment;

(q) maintain appropriate professional boundaries; and

(r) assume responsibility for own decisions and actions.

(3) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respect patient property and the property of others; and

(c) protect confidential information unless obligated by law to disclose the information.

#### **R156-31b-704. Generally Recognized Scope of Practice of an RN.**

In accordance with Subsection 58-31b-102(16), the RN practicing within the generally recognized RN scope of practice practices as follows:

(1) In demonstrating professional accountability, shall:

(a) practice within the legal boundaries for nursing through the scope of practice authorized in statute and rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base professional decisions on nursing knowledge and skills, and the needs of patients;

(d) accept responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a comprehensive nursing assessment;

(b) detect faulty or missing patient information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual and social aspects of the patient's condition;

(d) utilize this broad and complete analysis to plan

strategies of nursing care and nursing interventions that are integrated within the patient's overall health care plan;

(e) provide appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seek clarification of orders when needed;

(g) implement treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtain orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrate attentiveness and provides patient surveillance and monitoring;

(j) identify changes in patient's health status and comprehends clinical implications of patient signs, symptoms and changes as part of expected and unexpected patient course or emergent situations;

(k) evaluate the impact of nursing care, the patient's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;

(l) document nursing care;

(m) intervene on behalf of patient when problems are identified and revises care plan as needed;

(n) recognize patient characteristics that may affect the patient's health status; and

(o) take preventive measures to protect patient, others and self.

(3) In demonstrating the responsibility to act as an advocate for patient shall:

(a) respect the patient's rights, concerns, decisions and dignity;

(b) identify patient needs;

(c) attend to patient concerns or requests;

(d) promote safe patient environment;

(e) communicate patient choices, concerns and special needs with other health team members regarding:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(f) maintain appropriate professional boundaries;

(g) maintain patient confidentiality; and

(h) assume responsibility for own decisions and actions.

(4) In demonstrating the responsibility to organize, manage and supervise the practice of nursing, shall:

(a) assign to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;

(b) delegate to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;

(c) match patient needs with personnel qualifications, available resources and appropriate supervision;

(d) communicate directions and expectations for completion of the delegated activity;

(e) supervise others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;

(f) provide follow-up on problems and intervenes when needed;

(g) evaluate the effectiveness of the delegation or assignment;

(h) intervene when problems are identified and revises plan of care as needed;

(i) retain professional accountability for nursing care as provided;

(j) promote a safe and therapeutic environment by:

(i) providing appropriate monitoring and surveillance of

the care environment;

(ii) identifying unsafe care situations; and  
 (iii) correcting problems or referring problems to appropriate management level when needed; and  
 (k) teach and counsel patient families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.

(5) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient-centered health care plan;

(b) respect patient property, and the property of others; and

(c) protect confidential information.

(6) In being the chief administrative nurse shall:

(a) assure that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;

(b) assure that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;

(c) assure that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and

(d) assure that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.

(7) When functioning in a nursing program educator (faculty) role shall:

(a) teach current theory, principles of nursing practice and nursing management;

(b) provide content and clinical experiences for students consistent with statutes and rule;

(c) supervise students in the provision of nursing services; and

(d) evaluate student scholastic and clinical performance with expected program outcomes.

#### **R156-31b-801. Medication Aide - Certified - Formulary and Protocols.**

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MA-C to administer routine medications are as follows.

(1) Under the supervision of a licensed nurse as defined in Subsection R156-31b-102(40), an MA-C may:

(a) administer medication:

(i) via approved routes as listed in Subsection 58-31b-102(17)(b);

(ii) that includes turning oxygen on and off at a predetermined, established flow rate; and

(iii) that is prescribed as PRN (as needed), if expressly instructed to do so by the nurse, or the medication is an over-the-counter medication;

(b) destroy medications per facility policy;

(c) assist a patient with self administration; and

(d) account for controlled substances with another MA-C or nurse.

(2) An MA-C shall not administer medications via the following routes:

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastrostomy or jejunostomy tubes.

(3) An MA-C shall not administer the following kinds of medications:

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste.

(4) An MA-C shall not:

(a) administer any medication which requires nursing assessment or judgment prior to administration, on-going evaluation, or follow-up;

(b) receive written or verbal orders;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the nurse; and

(h) account for controlled substances, unless assisted by another MA-C or a nurse.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate the administration of medications to a specific patient or in a specific situation.

(6) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MA-Cs per shift.

(7) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise up to and including four MA-Cs per shift.

#### **R156-31b-802. Medication Aide - Certified - Approval of Training Programs.**

In accordance with Subsection 58-31b-601(3), the minimum standards for an MA-C training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to implementing the program.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of a minimum of 60 clock hours of didactic (classroom) training which is consistent with the model curriculum in Section R156-31b-803, and at least 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;

(b) be a faculty member of an approved nursing education program, or an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nurse Aide Registry; and

(c) have at least two years of clinical experience and at least one year of experience in long-term care in the past five

years.

(5) The on-site practical training experience instructor shall be available at all times during the practical training experience and shall meet the following criteria:

(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;

(b)(i) be a faculty member of an approved nursing education program with at least one year of experience in long-term care nursing; or

(ii) be an approved CNA instructor who has completed a "Train the Trainer" program recognized by the Utah Nurse Aide Registry, with at least one year of experience in long-term care, and at least three months experience in the specific training facility;

(c) shall not delegate supervisory responsibilities when providing practical experience training to a student;

(d) the practical training instructor to student ratio shall be:

(i) 1:2 if the instructor is working one-on-one with the student to administer the medications; or

(ii) 1:8 if the instructor is supervising a student who is working one-on-one with the clinical facility's medication nurse.

(6) An entity desiring to be approved to provide an MA-C training program to qualify a person for certification as a medication aide shall:

(a) submit to the Division an application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program including a well-stocked clinical skills lab or the equivalent;

(c) submit a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum in Section R156-31b-803;

(d) document minimal admission requirements including, but not limited to:

(i) an earned high school diploma or successful passage of the general educational development (GED) test;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry, with at least 2,000 hours of experience within the two years prior to application to the training program, working as a certified nurse aide in a long-term care setting; and

(iii) current cardiopulmonary resuscitation (CPR) certification.

#### **R156-31b-803. Medication Aide - Certified - Model Curriculum.**

The model curriculum which must be followed by anyone who desires to offer a medication aide certification program is the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

**KEY: licensing, nurses**

**March 29, 2010**

**Notice of Continuation April 1, 2008**

**58-31b-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-47b. Massage Therapy Practice Act Rule.**  
**R156-47b-101. Title.**

This rule is known as the "Massage Therapy Practice Act Rule."

**R156-47b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or this rule:

(1) "Accrediting agency" means an organization, association or commission nationally recognized by the United States Department of Education as a reliable authority in assessing the quality of education or training provided by the school or institution.

(2) "Clinic" means performing the techniques and skills learned under the curriculum of an accredited school while in a supervised student setting.

(3) "Direct supervision" as used in Subsection 58-47b-302(3)(e) means that the apprentice supervisor, acting within the scope of the supervising licensee's license, is in the facility where massage is being performed and directs the work of an apprentice pursuant to this chapter under Subsection R156-1-102a(4)(a) while the apprentice is engaged in performing massage.

(4) "FSMTB" means the Federation of State Massage Therapy Boards.

(5) "Lymphatic massage" means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(6) "Massage client services" means practicing the techniques and skills learned as an apprentice on the public in training under direct supervision.

(7) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(8) "Recognized school" means a school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that jurisdiction.

(9) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(1)(e) in Section R156-47b-502.

**R156-47b-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 47b.

**R156-47b-104. Organization - Relationship to Rule R156-1.**

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

**R156-47b-202. Massage Therapy Education Peer Committee.**

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curricula, apprenticeship curricula, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of

Education.

**R156-47b-302. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards.**

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) Curricula must be registered with the Utah Department of Commerce, Division of Consumer Protection or an accrediting agency recognized by the United States Department of Education.

(b) Curricula shall be a minimum of 600 hours and shall include the following:

(i) anatomy, physiology and kinesiology - 125 hours;

(ii) pathology - 40 hours;

(iii) massage theory including the five basic Swedish massage strokes - 285 hours;

(iv) professional standards, ethics and business practices - 35 hours;

(v) sanitation and universal precautions including CPR and first aid - 15 hours;

(vi) clinic - 100 hours; and

(vii) other related massage subjects as approved by the Division in collaboration with the Board.

(c) In addition to the curriculum requirements of Subsection R156-47b-302a(1)(b), new curricula shall include the major content areas, but are not required to meet the percentage weights of the National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB) Content Outline, published January 2010, and the National Certification Examination for Therapeutic Massage (NCETM) Content Outline, published January 2010 which are adopted and incorporated by reference.

**R156-47b-302a. Qualifications for Licensure - Equivalent Education and Training.**

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must provide documentation of:

(a)(i) graduation from a licensed or recognized school outside the state of Utah with a minimum of 500 hours;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of 2,000 hours; or

(b)(i) foreign education and training approval by NCBTMB as evidenced by current NCBTMB certification; and

(ii) practice as a licensed massage therapist for a minimum of 2,000 hours; or

(c)(i) completion of an equivalent apprenticeship program outside the state of Utah;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of 4,000 hours.

**R156-47b-302b. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall:

(a) pass the Utah Massage Law and Rule Examination; and

(b) pass one of the following examinations:

(i) the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB);

(ii) the National Certification Examination for Therapeutic Massage (NCETM);

(iii) the National Examination for State Licensure (NESL);

or

(iv) the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx).

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" shall pass the FSMTB MBLEx.

(3) Applicants for licensure as a massage apprentice shall pass the Utah Massage Law and Rule Examination.

**R156-47b-302c. Apprenticeship Standards for a Supervisor.**

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:  
 (a) the apprentice is licensed; and  
 (b) the supervisor is approved by the division;  
 (2) not begin a new apprenticeship program until:  
 (a) the apprentice being supervised passes the FSMTB MBLEx and becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and

(b) the supervisor complies with subsection (1);  
 (3) if an apprentice being supervised fails the FSMTB MBLEx three times:

(a) together with the apprentice being supervised, meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination;

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and

(d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the FSMTB MBLEx;

(4) supervise not more than two apprentices at one time, unless otherwise approved by the division in collaboration with the board;

(5) train the massage apprentice in the areas of:  
 (a) anatomy, physiology and kinesiology - 125 hours;  
 (b) pathology - 40 hours;  
 (c) massage theory - 50 hours;  
 (d) massage techniques including the five basic Swedish massage strokes - 120 hours;

(e) massage client service - 300 hours;  
 (f) hands on instruction - 310 hours;  
 (g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours;

(6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;

(7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(8) keep a daily record which shall include the hours of instruction and training completed, the hours of client services performed, and the number of hours of training completed;

(9) make available to the division upon request, the apprentice's training records;

(10) verify the completion of the apprenticeship program on forms available from the division;

(11) notify the division within ten working days if the apprenticeship program is terminated;

(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(13) ensure that the massage client services required in Subsection (5)(d) only be performed on the public; all other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

**R156-47b-302d. Good Moral Character - Disqualifying Convictions.**

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, may disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

**R156-47b-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308e.

**R156-47b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;

(6) failure to use appropriate draping procedures to protect the client's personal privacy; and

(7) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of



Practice", September 17, 2005 edition, which is hereby incorporated by reference.

**R156-47b-601. Standards for Animal Massage Training.**

In accordance with Subsection 58-28-307(12)(c), a massage therapist practicing animal massage shall have received 60 hours of training in the following areas:

- (1) quadruped anatomy;
- (2) the theory of quadruped massage; and
- (3) supervised quadruped massage experience.

**KEY: licensing, massage therapy**

**February 22, 2010**

**Notice of Continuation January 31, 2006**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**58-47b-101**

**R164. Commerce, Securities.****R164-4. Licensing Requirements.****R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.**

(A) Authority and purpose  
 (1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

**(B) Definitions**

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "NASD" means the National Association of Securities Dealers.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

**(1) License requirements**

(1)(a) To license as a broker-dealer, applicant must be a member of the NASD and submit to the CRD the following:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

**(2) Post-licensing requirements**

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.

**(3) License renewal requirements**

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

**(4) License or application withdrawal requirements**

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

**(1) License requirements**

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:

(1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD, and any other exams required by the SEC or the NASD; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

**(2) License renewal requirements**

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the CRD the license fee specified in the Divisions fee schedule before December 31.

**(3) License or application withdrawal requirements**

(3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.

**(4) Miscellaneous provisions**

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

**(1) License requirements**

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:

(1)(a)(i) NASD Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

**(2) License renewal requirements**

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the Division the following before December 31 of each year:

(2)(b)(i) NASD Form U-4 with original signatures; and

(2)(b)(ii) The license fee specified in the Division's fee schedule.

**(3) License or application withdrawal requirements**

(3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal or NASD Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

**(4) Miscellaneous provisions**

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

**R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.****(A) Authority and Purpose**

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

**(B) Definitions**

(1) "CRD" means the Central Registration Depository.

(2) "Designated Official" means a person that is a partner, officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

(5) "IARD" means the Investment Adviser Registration Depository.

(6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(7) "NASAA" means the North American Securities Administrators Association, Inc.

(8) "NASD" means the National Association of Securities Dealers.

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit the following:

(1)(a) To the IARD:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited balance sheet if required under item 14 of part II of Form ADV; and

(1)(a)(ii) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(1)(b) To the CRD:

(1)(b)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and

(1)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam.

(1)(c) To the Division:

(1)(c)(i) Part II of SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(1)(c)(ii) Division Form 4-5BIA - Indemnity Bond of Investment Adviser, if required by Section R164-4-5, or proof of membership in SIPC.

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit the following:

(2)(a) To the CRD:

(2)(a)(i) NASD Form U-4; and

(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam.

(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal

covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following to the IARD before December 31:

(2)(a) a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration;

(2)(b) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official);

(2)(c) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5;

(2)(d) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of \$500 per client, or if the investment adviser has custody or possession of clients' funds or securities; and

(2)(e) a copy of the alternate disclosure brochure given or offered if the investment adviser delivered or offered to deliver a written disclosure statement in lieu of Part II of Form ADV during the last calendar year of the licensing period.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit to the IARD before December 31, a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the IARD, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file with the CRD, a completed NASD Form U-5.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's NASD Form U-5, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances

would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (E) if:

(4)(a)(i) Providing, advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication,

which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

### **R164-4-3. General Licensing Requirements.**

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by the NASD.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "IARD" means the Investment Adviser Registration Depository operated by the NASD.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "NASD" means the National Association of Securities Dealers.

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement if such individual currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded

by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

(E) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD;

(1)(e) an investment adviser representative must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD; and

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, NASD Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

**R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.**

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform

Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

**R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.**

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of \$25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least \$25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

#### **R164-4-6. Notice Filing Requirements for Federal Covered Advisers.**

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with IARD the following:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must

submit the following to IARD before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

(E) Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

#### **R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.**

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer,

investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

#### **R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.**

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian

person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

#### **R164-4-9. Exemptions From Licensing Requirements for Investment Advisers Providing Advice to Certain Institutional Investors.**

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than \$10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities, or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).



(C) Exemption for Investment Advice to Certain Institutional Investors

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than \$10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the

**Entity**

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

**(I) No Licensing Exemption for Advisory Services to Natural Persons**

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

**KEY: securities, securities regulation, investment advisers, securities licensing requirements****March 11, 2010****61-1-3****Notice of Continuation July 30, 2007****61-1-4****61-1-5****61-1-6****61-1-13****61-1-14****61-1-24**

**R212. Community and Culture, History.****R212-11. Historic Preservation Tax Credit.****R212-11-1. Authority.**

(1) Sections 59-7-609 and 59-10-108.5 allow for an historic preservation tax credit by the Utah State Tax Commission and provide for certain duties of the Division of State History and the State Historic Preservation Office.

(2) Section 9-8-205 provides that the Board of State History and the Division shall make policies and rules to direct the division director in the carrying out of his duties.

**R212-11-2. Purpose.**

The purposes of this rule are: (1) to ensure an orderly process by the Division of State History and the State Historic Preservation Office, (2) to allow for appeal and judicial review of decisions, and (3) to ensure that all rehabilitation work on historic preservation tax credit projects meets the Secretary of the Interior's "Standards for Rehabilitation".

**R212-11-3. Applicability.**

This rule applies to all applications and proceedings under Sections 59-7-609 and 59-10-108.5.

**R212-11-4. Definitions.**

As used in this rule:

(1) "State Historic Preservation Office" means the Office of Preservation within the Division of State History known hereafter as Office.

(2) "Director" means the Director of the Division of State History.

(3) "Office" means the Office of Historic Preservation within the Division of State History.

(4) "Division" means the Division of State History.

(5) "Historic Preservation Tax Credit" means any tax credit allowed by the Utah State Tax Commission pursuant to Sections 59-7-609 or 59-10-108.5.

(6) "Project" means the entire scope and course of work on any building and accompanying site for which an applicant is seeking the historic preservation tax credit.

(7) "Applicant" means any person or entity that is seeking an historic preservation tax credit.

(8) "Standards" means the Secretary of Interior's "Standards for Rehabilitation" as promulgated under the authority of the National Historic Preservation Act 1966 as amended, 16 USC Section 470 et seq.

(9) "National Register" means the National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended, 16 USC Section 470 et seq.

(10) "Anticipatory construction, demolition, or alteration" means any rehabilitation-related action that does not meet the "Standards" taken with prior knowledge and in intentional disregard of the "Standards" or after having received Division comments.

**R212-11-5. Application for Historic Preservation Tax Credit.**

(1) Any person or entity seeking the historic preservation tax credit shall, prior to completion of the rehabilitation project, apply to the Office for certification of historic significance and approval of the proposed or on-going rehabilitation work. The applications shall be on forms approved by the Office. The applicant shall complete the applications in whole and shall provide all other information requested relative to the project including adequate pre-rehabilitation photographs and other required documentation.

(2) The Office shall consult with the applicant and provide historic and technical advice and assistance subject to budgetary and management constraints, as necessary to assist the applicant

in applying for the historic preservation tax credit. The Office shall review the application within thirty days of receipt to determine if the proposed or on-going rehabilitation work meets the "Standards".

(3) If the Office determines the project meets the "Standards" and that no anticipatory construction, demolition, or alteration has occurred, the Office shall provide the applicant with written approval of the proposed or on-going work along with any further comments or conditions deemed necessary.

(4) If after full consultation the Office determines the project does not meet the "Standards", that anticipatory construction, demolition, or alteration has occurred, or the building is not a certifiable historic building, the Office shall notify the applicant in writing of the decision, set forth the basis of the decision, and detail the process to appeal the decision. The applicant or other interested party may request a review of the decision as set forth in R212-11-9.

**R212-11-6. Execution of Project.**

(1) During the course of the project, the Office shall be available for continuing consultation subject to budgetary and management constraints. If the applicant desires to modify the approved work plan, the applicant shall make such request for a change on a form approved by the Office and shall be governed by the provisions of R212-11-5.

(2) The applicant shall allow access and observation of the project building at any reasonable time upon request of the Office.

**R212-11-7. Certification of Completed Work.**

(1) Upon completion of the project, the applicant shall request certification of completed work in writing on a form approved by the Office and shall provide all other information requested by the Office relative to the project. The applicant shall allow access to the project for final observation by the Office if necessary in determining if the work conforms with the approved plan.

(2) At this time the applicant shall also submit a complete National Register nomination if the building is not already listed in the National Register as set forth in R212-11-10.

(3) The final Office review shall be in writing and shall be forwarded to the applicant within thirty days of receipt of a complete application.

**R212-11-8. Issuance of Authorization Form and Certification Number.**

If the Office determines the work was completed in accordance with the approved plan and meets the "Standards", the Office shall issue an authorization form provided by the Utah State Tax Commission, including the unique certification number. If any request for review is sought, the Office shall not issue the authorization form or unique certification number unless and until the review results in approval of the project.

**R212-11-9. Request for Review and Appeal Proceedings.**

(1) All proceedings under R212-11 with regard to the historic preservation tax credit are informal.

(2) The applicant or any interested person may seek review of the decision of the Office by filing a request for review with the Director. The request for review shall set forth in detail that portion of the decision of the Office for which review is sought, and on what basis the decision was inconsistent with the facts or "Standards". Copies of the request for review shall be sent to the applicant and to any other party who has expressed interest in the proceeding as appropriate. Any such request for review must be filed with the Director within 30 days of the decision of the Office.

(3) The applicant or any interested person may file with the Director a response to the request for review within fifteen

days of notification.

(4) Review of the Office decision shall be made by the Director and shall be based on review of the project file, the request for review, and responses, if any. The Director may conduct an independent investigation and request further information from the Office staff, applicant, or any other party to the project. In addition, the Director may, at his/her sole discretion, conduct an informal hearing on the review.

(5) Within thirty days of receipt of the request for review, the Director shall issue his/her decision based on review of the project file and the information received at a hearing or from other sources, if any. The Director shall set forth in writing his/her decision concerning the request for review and forward it to the applicant and other interested parties.

(6) Judicial review of the decision of the Director may be obtained by filing a complaint in the Third Judicial District Court in Salt Lake County seeking review by a trial de novo. The issue in the district court is whether the decision of the Director constituted an abuse of his/her discretion. The person or entity seeking judicial review shall have the burden of proof that the decision of the Director constituted an abuse of his/her discretion.

**R212-11-10. Noncertified Historic Buildings.**

(1) If the project building is not listed in the National Register at the time of the application for certification of completed work, the applicant shall submit a complete National Register nomination form to the Office. The Office shall review the nomination for completeness and forward it to the Board of State History according to requirements of 36 CFR 60 and applicable policies for evaluation and action.

(2) If the project building is located in a National Register Historic District and the building has not been designated by the Division as being of significance to the district at the time of application for certification of completed work, the applicant shall submit a request for designation to the Office. The request shall be on a form approved by the Office. The Office shall review the request for completeness and determine if the project building is of significance to the district.

**KEY: preservation, tax credits, rehabilitation, housing**  
**January 2, 1996** 59-7-609  
**Notice of Continuation March 10, 2010** 59-10-108.5  
9-8-205

**R307. Environmental Quality, Air Quality.****R307-101. General Requirements.****R307-101-1. Foreword.**

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

**R307-101-2. Definitions.**

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The Executive Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the executive secretary, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the executive secretary if the executive secretary determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of

life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) 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;

(3) 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.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post

combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes,

a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

- (i) Salt Lake County, effective August 18, 1997; and
- (ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

- (i) Salt Lake City, effective March 22, 1999;
- (ii) Ogden City, effective May 8, 2001; and
- (iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
- (4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) use of an alternative fuel or raw material by a source:
  - (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or
  - (b) which the source is otherwise approved to use;
- (6) an increase in the hours of operation or in the production rate unless such change would be prohibited under

any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the executive secretary determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the executive secretary has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the executive secretary determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum or reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;

- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period,

not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it



would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in

widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The executive secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the executive secretary determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the executive secretary shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or

from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as solvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly

flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s)(1), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

### **R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.**

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2009.

### **KEY: air pollution, definitions**

**March 4, 2010**

**Notice of Continuation July 2, 2009**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-103. Administrative Procedures.****R307-103-1. Scope of Rule.**

(1) This rule R307-103 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 2, Utah Air Conservation Act, and governed by Title 63G, Chapter 4, the Utah Administrative Procedures Act.

(2) The executive secretary may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 2, the recipient, or in some situations other persons, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63G-4-102(2)(k) and are not governed by R307-103-3 through R307-103-14 of this Rule. Initial orders and notices of violation are further described in R307-103-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R307-103.

(5) The Utah Administrative Procedures Act and this rule R307-103 also govern any other formal adjudicative proceeding before the Air Quality Board.

**R307-103-2. Initial Proceedings.**

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) certification for tank vapor tightness testing under R307-342;

(e) certification of asbestos contractors under R307-801;

(f) fees imposed for major source reviews under R307-414;

(g) assessment of other fees except as provided in R307-103-14(7);

(h) eligibility of pollution control equipment for tax exemptions under R307-120 and R307-121;

(i) requests for variances, exemptions, and other approvals;

(j) requests or approvals for experiments, testing or control plans; and

(k) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840.

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

**R307-103-3. Contesting an Initial Order or Notice of Violation.**

(1) Procedure. Initial orders and notices of violation, as described in R307-103-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Air Quality Board, Division of Air Quality, PO Box 144820, Salt Lake City, Utah 84114-4820.

(2) Content Required and Deadline for Request. Any such

request is governed by and shall comply with the requirements of 63G-4-201(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R307-103-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

**R307-103-4. Designation of Proceedings as Formal or Informal.**

(1) Contest of an initial order or notice of violation resulting from proceedings described in R307-103-2(1) shall be conducted as a formal proceeding.

(2) The board in accordance with 63G-4-202(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

**R307-103-5. Notice of and Response to Request for Agency Action.**

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with 63G-4-201(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R307-103-6(4), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63G-4-204.

**R307-103-6. Parties and Intervention.**

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the board has granted intervention under R307-103-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of 63G-4-207. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R307-103-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63G-4-201 may file a Request for Agency Action at the same time he files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a

Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of 63G-4-207(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

### **R307-103-7. Conduct of Proceedings.**

#### (1) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63G, Chapter 4. The board is also the "presiding officer," as that term is used in Title 63G, Chapter 4, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.

(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

#### (5) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list

is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

#### (6) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63G-4-208, at least seven business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

#### (7) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

### **R307-103-8. Hearings.**

The presiding officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

### **R307-103-9. Orders.**

(1) Recommended Orders of Appointed Presiding Officers.

(a) Unless an appointed presiding officer is required by the terms of his appointment to issue a final order, he shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(d) The board may modify this procedure with notice to all parties.

(2) Final Orders. The board shall issue a final order which shall include the information required by 63G-4-208 or 63G-4-203(1)(i).

### **R307-103-10. Stays of Orders.**

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.

(b) The board may order a stay of the order if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.

(b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R307-103-10(1)(b) are met.

#### **R307-103-11. Reconsideration.**

No agency review under 63G-4-301 is available. A party may request reconsideration of an order of the presiding officer as provided in 63G-4-302.

#### **R307-103-12. Disqualification of Board Members or Other Presiding Officers.**

(1) Disqualification of Board Members or Other Presiding Officers.

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

#### **R307-103-13. Declaratory Orders.**

(1) A request for a declaratory order may be filed in accordance with the provisions of 63G-4-503. The request shall be titled a petition for declaratory order and shall meet the requirements of 63G-4-201(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative

hearing, will be conducted using formal procedures unless converted to an informal proceeding under R307-103-4(2) above.

(3) The provisions of 63G-4-202 through 63G-4-302 apply to declaratory proceedings, as do the provisions of this Rule R307-103.

#### **R307-103-14. Miscellaneous.**

(1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.

(2) Extensions of Time. Except as otherwise provided by statute, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R307-103-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation.

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R307-103-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63G, Chapter 2, Utah Government Record Access and Management Act, and Title 63A, Chapter 12, Archives and Records Service, are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, or by this rule.

**KEY: air pollution, administrative procedures, hearings  
April 12, 2001  
Notice of Continuation March 4, 2010**

**63G-4**

**R307. Environmental Quality, Air Quality.****R307-201. Emission Standards: General Emission Standards.****R307-201-1. Purpose.**

R307-201 establishes emission standards for all areas of the state except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

**R307-201-2. Applicability.**

R307-201 applies statewide to any sources of emissions except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

**R307-201-3. Visible Emissions Standards.**

(1) Visible emissions from installations constructed on or before April 25, 1971, except diesel engines, shall be of a shade or density no darker than 40% opacity, except as otherwise provided in these rules.

(2) Visible emissions from installations constructed after April 25, 1971, except diesel engines shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these rules.

(3) Visible emissions for all incinerators, no matter when constructed, shall be of shade or density no darker than 20% opacity.

(4) No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit visible emissions.

(5) Emissions from diesel engines, except locomotives, manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(6) Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(7) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the executive secretary finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

(8) Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

(9) Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a 6-minute period shall not apply.

**R307-201-4. Automobile Emission Control Devices.**

Any person owning or operating any motor vehicle or motor vehicle engine registered or principally operated in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules,

shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

**KEY: air pollution, PM10****September 2, 2005****Notice of Continuation March 4, 2010****19-2-101****19-2-104**

**R307. Environmental Quality, Air Quality.**  
**R307-202. Emission Standards: General Burning.**  
**R307-202-1. Definitions and Exclusions.**

As provided in Section 19-2-114, the provisions of R307-202 are not applicable to:

- (1) burning incident to horticultural or agricultural operations of:
  - (a) prunings from trees, bushes, and plants; or
  - (b) dead or diseased trees, bushes, and plants, including stubble;
- (2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;
- (3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and
- (4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

**R307-202-2. Community Waste Disposal.**

No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

**R307-202-3. General Prohibitions.**

No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of R307-202-4 and 5.

**R307-202-4. Permissible Burning - Without Permit.**

When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

- (1) in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;
- (2) campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;
- (3) in indoor fireplaces and residential solid fuel burning devices except as provided in R307-302-2;
- (4) properly operated industrial flares for combustion of flammable gases; and
- (5) burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

**R307-202-5. Permissible Burning - With Permit.**

(1) Open burning is authorized by the issuance of a permit as specified in (3) below when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

(2) Individual permits for the types of burning listed in (3) below may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

(3) Types of burning for which a permit may be granted are:

- (a) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar

operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(b) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other materials which can cause severe air pollution are not used to start fires or keep fires burning;

(c) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(d) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(e) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(i) in any area of the state, the local county fire marshal has established a 30 day period between March 1 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshal has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(ii) such burning occurs during the period established by the local county fire marshal;

(iii) materials to be burned are thoroughly dry;

(iv) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

(4) The Board may grant a permit for types of open burning not specified in (3) above on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

**R307-202-6. Special Conditions.**

Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

**KEY: air pollution, open burning\*, fire marshal\***

**July 15, 1999**

**Notice of Continuation March 4, 2010**

**19-2-104**

**11-7-1(2)(a)**

**65A-8-9**

**R307. Environmental Quality, Air Quality.****R307-203. Emission Standards: Sulfur Content of Fuels.****R307-203-1. Commercial and Industrial Sources.**

(1) Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

(a) In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: weight percent sulfur, gross heating value (btu per unit volume), and density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

(b) In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

(c) All sources located in the SO<sub>2</sub> nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with (a) and (b) above.

(d) Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the executive secretary upon request, and shall include a period of two years ending with the date of the request.

(e) If the owner/operator of the source can demonstrate to the executive secretary that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

(f) Any person may apply to the executive secretary for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-203, or that the alternative test method is equivalent to that required by R307-203. The executive secretary shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

(2) Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of (1) above. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of (1) above. Control apparatus to continuously prevent the emission of sulfur greater than provided by (1) above must be specified in the application for an exemption.

(3) In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the executive secretary. The operator shall provide the executive secretary with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with (1) above. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from (1) above are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

(4) Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

(a) For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

(b) For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

(c) For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

**R307-203-2. Sulfur and Ash Content of Coal for Residential Use.**

(1) After July 1, 1987, no person shall sell, distribute, use or make available for use any coal or coal containing fuel for direct space heating in residential solid fuel burning devices and fireplaces which exceeds the following limitations as measured by the American Society for Testing Materials Methods:

(a) 1.0 pound sulfur per million BTU's, and

(b) 12% volatile ash content.

(2) Any person selling coal or coal containing fuel used for direct residential space heating within the State of Utah shall provide written documentation to the coal consumer of the sulfur and volatile ash content of the coal being purchased.

**R307-203-3. Emissions Standards.**

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

**KEY: air pollution, fuel composition\*, fuel oil\***

**September 15, 1998**

**Notice of Continuation March 4, 2010**

**19-2-104**



**R307. Environmental Quality, Air Quality.****R307-204. Emission Standards: Smoke Management.****R307-204-1. Purpose and Goals.**

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health and visibility of prescribed fire and wildland fire.

**R307-204-2. Applicability.**

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

**R307-204-3. Definitions.**

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire or a wildland fire use event that affect the direction, duration, height or density of smoke.

"Burn Plan" means the plan required for each fire ignited by managers or allowed to burn.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include but are not limited to safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least the next five years.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burning" means burning of individual piles.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities.

Structures, if any, are widely scattered.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Use Event" means naturally ignited wildland fire that is managed to accomplish specific pre-stated resource management objectives in predefined geographic areas.

"Wildland Fire Implementation Plan" means the plan required for each fire that is allowed to burn.

"Wildland Fire Implementation Plan Stage I" means the initial wildland fire planning document. It is developed for fires with a low potential of spread and negative impacts.

"Wildland Fire Implementation Plan Stage II" means a more detailed wildland fire planning document. It is developed for larger more active fires with a greater potential for geographic extent.

**R307-204-4. General Requirements.**

(1) Management of On-Going Fires. If, after consultation with the land manager, the executive secretary determines that a prescribed fire, wildland fire use event, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the executive secretary.

(3) Non-burning Alternatives to Fire. Beginning in 2004 and annually thereafter, each land manager shall submit to the executive secretary by March 15 a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.

(4) Annual Emissions Goal. The executive secretary shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions increases to the maximum feasible extent.

(5) Long-term Fire Projections. Each land manager shall provide to the executive secretary by March 15 annually long-term projections of future prescribed fire activity for annual assessment of visibility impairment.

**R307-204-5. Burn Schedule.**

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the executive secretary on forms provided by the Division of Air Quality, and shall include the following information for all fires including those smaller than 50 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, ignition method, and planned use of emission reduction techniques to support establishment of the annual emissions goal;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

**R307-204-6. Small Prescribed Fires.**

(1) A prescribed fire that covers less than 20 acres per burn shall be ignited only when the clearing index is 500 or greater.

(2) A prescribed fire that covers less than 20 acres per day

may be ignited when the National Weather Service Clearing Index is between 500 and 400 under a conditional basis with approval of the executive secretary.

(a) The prescribed fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the executive secretary by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) Additional reporting requirements including hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

#### **R307-204-7. Small Prescribed Pile Fires (de minimis).**

(1) Pile burns covering up to 30,000 cubic feet per day shall be ignited only when the clearing index is 500 or greater.

(2) Pile burns covering up to 30,000 cubic feet per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 under a conditional basis with approval of the executive secretary.

(a) The pile fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the executive secretary by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) Additional reporting requirements including hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

#### **R307-204-8. Large Prescribed Fires.**

(1) Burn Plan. For a prescribed fire that covers 20 acres, the land manager shall submit to the executive secretary a burn plan, including a fire prescription, upon request.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the executive secretary for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the executive secretary approves or conditionally approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed burn, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

#### **R307-204-9. Large Prescribed Pile Fires.**

(1) Burn Plan. For a prescribed pile fire that exceeds 30,000 cubic feet per day, the land manager shall submit to the

executive secretary a burn plan, including a fire prescription, upon request.

(2) Pre-Burn Information. For a prescribed pile fire that exceeds 30,000 cubic feet or more per burn, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the executive secretary for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed pile fire requiring a burn plan shall be ignited before the executive secretary approves or conditionally approves the burn request.

(c) If a prescribed pile fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed pile burn, for each day of pile fire activity exceeding 30,000 cubic feet, the land manager shall submit to the executive secretary a daily emission report on the

form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed pile burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed pile fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

#### **R307-204-10. Requirements for Wildland Fire Use Events.**

(1) Burn Approval Required.

(a) The land manager shall notify the executive secretary of any potential wildland fire use (WFU) event having a wildland fire implementation plan (WFIP) Stage I. The following information will be provided:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day;

(vi) Wilderness or Resource Natural Area designation, if applicable;

(vii) Distance to nearest community;

(viii) Elevation of fire; and

(ix) Fire's airshed number.

(b) The Land Managers shall notify the executive secretary of any potential wildland fire use (WFU) event covering more than 20 acres or having a WFIP Stage II. In addition to the information required for a WFU with a WFIP Stage I, the following additional information will be provided to the executive secretary as it is being developed:

(i) WFIP Stage II wildland fire implementation plan and anticipated emissions;

(ii) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the executive secretary.

(c) The executive secretary's approval of the smoke management element of the wildland fire implementation plan shall be obtained before managing the fire as a wildland fire use event.

(2) Daily Emission Report for wildland fire use event. By

0800 hours on the business day following fire activity covering 20 acres or more, the land manager shall submit to the executive secretary the daily emission report on the form provided by the Division of Air Quality, including the following information:

- (a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;
  - (b) UTM coordinate;
  - (c) Dates and times of the start and end of the burn;
  - (d) Black acres by wildland fuel type;
  - (e) Estimated proportion of wildland fuel consumed by wildland fuel type;
  - (f) Proportion of moisture in the wildland fuel by size class;
  - (g) Emission estimates;
  - (h) Level of public interest or concern regarding smoke;
- and

- (i) Conformance to the wildland fire implementation plan.
- (3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the wildland fire implementation plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

**KEY: air quality, wildland fire, smoke, land manager**  
**April 7, 2006** **19-2-104(1)(a)**  
**Notice of Continuation March 4, 2010**

**R307. Environmental Quality, Air Quality.****R307-205. Emission Standards: Fugitive Emissions and Fugitive Dust.****R307-205-1. Purpose.**

R307-205 establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust for sources located in all areas in the state except those listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

**R307-205-2. Applicability.**

R307-205 applies statewide to all sources of fugitive emissions and fugitive dust, except for agricultural or horticultural activities specified in 19-2-114(1)-(3) and any source listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

**R307-205-3. Definitions.**

The following definition applies throughout R307-205:

"Material" means sand, gravel, soil, minerals or other matter that may create fugitive dust.

**R307-205-4. Fugitive Emissions.**

Fugitive emissions from sources which were constructed on or before April 25, 1971, shall not exceed 40% opacity. Fugitive emissions from sources constructed or modified after April 25, 1971, shall not exceed 20% opacity.

**R307-205-5. Fugitive Dust.**

(1) Storage and Handling of Materials. Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall minimize fugitive dust from such an operation. Such control may include the use of enclosures, covers, stabilization or other equivalent methods or techniques as approved by the executive secretary.

**(2) Construction and Demolition Activities.**

(a) Any person engaging in clearing or leveling of land greater than one-quarter acre in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land greater than one-quarter acre in size or access haul roads shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization of potential fugitive dust sources or other equivalent methods or techniques approved by the executive secretary.

(b) The owner or operator of any land area greater than one-quarter acre in size that has been cleared or excavated shall take measures to prevent fugitive particulate matter from becoming airborne. Such measures may include:

- (i) planting vegetative cover,
- (ii) providing synthetic cover,
- (iii) watering,
- (iv) chemical stabilization,
- (v) wind breaks, or
- (vi) other equivalent methods or techniques approved by the executive secretary.

(c) Any person engaging in demolition activities including razing homes, buildings, or other structures or removing paving material from roads or parking areas shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization or other equivalent methods or techniques approved by the executive secretary.

**R307-205-6. Roads.**

(1) The executive secretary may require persons owning, operating or maintaining any new or existing road, or having right-of-way easement or possessory right to use the same, to supply traffic count information as determined necessary to ascertain whether or not control techniques are adequate or additional controls are necessary.

(2) Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

**R307-205-7. Mining Activities.**

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-205-7 and not by R307-205-5 and 6.

(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

(3) The fugitive dust control measures to be used may include:

- (a) periodic watering of unpaved roads,
- (b) chemical stabilization of unpaved roads,
- (c) paving of roads,
- (d) prompt removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface,
- (e) restricting the speed of vehicles in and around the mining operation,
- (f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust,
- (g) restricting the travel of vehicles on other than established roads,
- (h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage,
- (i) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion,
- (j) minimizing the area of disturbed land,
- (k) prompt revegetation of regraded lands,
- (l) planting of special windbreak vegetation at critical points in the permit area,
- (m) control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the executive secretary,
- (n) restricting the areas to be blasted at any one time,
- (o) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization,
- (p) restricting fugitive dust at spoil and coal transfer and loading points,
- (q) control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or techniques as approved by the executive secretary, or
- (r) other techniques as determined necessary by the executive secretary.

**R307-205-8. Tailings Piles and Ponds.**

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-205-8 and not by R307-205-5 and 6.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls may include:

- (a) watering,
- (b) chemical stabilization,
- (c) synthetic covers,
- (d) vegetative covers,
- (e) wind breaks,
- (f) minimizing the area of disturbed tailings,
- (g) restricting the speed of vehicles in and around the tailings operation, or
- (h) other equivalent methods or techniques which may be approvable by the executive secretary.

**KEY: air pollution, fugitive emissions, mining, tailings**

July 7, 2005 19-2-101

Notice of Continuation March 4, 2010 19-2-104

19-2-109

**R307. Environmental Quality, Air Quality.****R307-206. Emission Standards: Abrasive Blasting.****R307-206-1. Purpose.**

R307-206 establishes work practice and emission standards for abrasive blasting operations for sources located statewide except for those sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

**R307-206-2. Definitions.**

(1) The following additional definitions apply to R307-206:

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

**R307-206-3. Applicability.**

R307-206 applies statewide to any abrasive blasting operation, except for any source that is listed in Section IX, Part H of the state implementation plan or that is located in a PM10 nonattainment or maintenance area.

**R307-206-4. Visible Emission Standards.**

Visible emissions from abrasive blasting operations shall not exceed 40% opacity, except for an aggregate period of three minutes in any one hour.

**R307-206-5. Visible Emission Evaluation Techniques.**

(1) Visible emissions shall be measured using EPA Method 9. Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

(2) Visible emissions from unconfined blasting shall be measured at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

(3) An unconfined blasting operation that uses multiple nozzles shall be considered a single source unless it can be demonstrated by the owner or operator that each nozzle, measured separately, meets the emission and performance standards provided in R307-206-2 through 4.

(4) Visible emissions from confined blasting shall be measured at the densest point after the air contaminant leaves the enclosure.

**KEY: air pollution, abrasive blasting, PM10**

**July 7, 2005**

**19-2-104(1)(a)**

**Notice of Continuation March 4, 2010**

**R307. Environmental Quality, Air Quality.****R307-207. Emission Standards: Residential Fireplaces and Stoves.****R307-207-1. Purpose.**

R307-201 establishes emission standards for all areas of the state except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

**R307-207-2. Applicability.**

R307-207 applies statewide except for the following areas: all regions of Utah County north of the southernmost border of Payson City and east of State Route 68, all of Salt Lake County, all of Davis County, and in all regions of Weber County west of the Wasatch Mountain Range.

**R307-207-3. Opacity for Residential Heating.**

Visible emissions from residential solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

- (1) An initial fifteen minute start-up period, and
- (2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

**KEY: woodburning, fireplaces, stoves, PM 10**

**September 2, 2005**

**Notice of Continuation March 4, 2010**

**19-2-101**

**19-2-104**



**R309. Environmental Quality, Drinking Water.****R309-100. Administration: 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 63G-3 of 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.**

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) Has at least 15 service connections, or

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

(c) A ratio of 3.13 persons per connection shall be used to calculate the population served unless more accurate information is available. The ratio is based on the statewide average persons per residence in the 2000 census. Therefore, notwithstanding the above stated threshold for the number of service connections, a drinking water system consisting of at least 8 service connections shall be deemed to serve 25 people and consequently be classified as a public drinking water system. This ratio shall only be used to determine whether any particular water system is considered a public water system. Any person or entity may challenge this provision by submitting documentation to the Executive Secretary showing that the drinking water system, upon complete build out, falls below both thresholds listed in (a) and (b) above. All decisions made by the Executive Secretary may be appealed to the Drinking Water Board.

(d) Submetered Properties.

(i) Submetered Properties means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system.

(ii) A property owner who installs submeters to track usage of water by tenants on his or her property shall not be subject to these rules solely as a result of taking the administrative act of submetering and billing.

(iii) Owners of submetered properties shall receive all their water from a regulated public water system to qualify under the terms of R309-105-5 for exemption from monitoring requirements, except as to the selling of water.

(iv) This is not intended to exempt systems where the

property in question has a large distribution system (piping in excess of 500 feet in length and sized larger than the normal service lateral based on a fixture unit analysis) serves a large population or serves a mixed (commercial/residential) population (e.g. many military installations/facilities or large mobile home parks or P.U.D's) from regulation as a public drinking water system as pertains to notifying the Division of the persons indicated below in (3) or plan review of modifications or changes to their systems (refer to R309-500).

(e) The term public drinking water system includes collection, treatment, storage or 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) Categories of Public Drinking Water Systems**

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

(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) "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) "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.

(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.

**(3) 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. 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 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. 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. Sanitary Survey, Evaluation, and Corrective Action 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) CONDUCTING SANITARY SURVEYS**

(a) The Executive Secretary shall ensure a sanitary survey is conducted at least every three years on all public water systems. The Executive Secretary may reduce this frequency to once every five years based on outstanding performance on prior sanitary surveys.

(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) Division of Drinking Water personnel;
- (ii) Utah Department of Environmental Quality District Engineers;
- (iii) local health officials;
- (iv) Forest Service engineers;
- (v) Utah Rural Water Association staff;
- (vi) consulting engineers; and
- (vii) other qualified individuals authorized in writing by the Executive Secretary.

(3) Public water systems must provide the Executive Secretary, at the Executive Secretary's request, any existing information that will enable the State to conduct a sanitary survey.

(4) For the purposes of this subpart, a "sanitary survey", as conducted by the Executive Secretary, includes but is not limited to, an onsite review of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(5) The sanitary survey must include an evaluation of the applicable components listed in paragraphs (5)(a) through (h) of this section:

- (a) Source,
- (b) Treatment,
- (c) Distribution system,
- (d) Finished water storage,
- (e) Pumps, pump facilities, and controls,
- (f) Monitoring, reporting, and data verification,
- (g) System management and operation, and
- (h) Operator compliance with State requirements.

##### **(6) CONDITIONS ON CONDUCT OF SANITARY SURVEYS**

In order for the groups of individuals listed in R309-100-7(2)(b) 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.

##### **(7) 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.

##### **(8) 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.

##### **(9) CORRECTIVE ACTION**

Public water systems must comply with requirements found in R309-215-16(3)(a)(iii), R309-215-16(3)(a)(iv), R309-215-16(3)(a)(v), R309-215-16(3)(a)(vi), and R309-215-16(3)(a)(vii).

(10) Refer to R309-100-8 and R309-105-6 for further requirements.

#### **R309-100-8. 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 R309-400.

#### **R309-100-9. Orders and Emergency Actions.**

(1) In situations in which a public water system fails to meet the requirements of these rules, the Board or the Executive Secretary may issue an 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 may result in the imposition of penalties as provided in the Utah Safe Drinking Water Act.

(3) The Executive Secretary may respond to emergency situations involving public drinking water, including emergency situations as described in R309-105-18, in a manner appropriate to protect the public health. The Executive Secretary's response may include the following:

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

(b) Ordering water suppliers to take appropriate measures to protect public health, including issuance of orders pursuant to 63G-4-502, if warranted.

#### **R309-100-10. Variances.**

(1) Variances to the requirements of R309-200 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 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 104-182, 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. Exemptions.**

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

(a) 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) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

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

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

(3) No exemptions from the minimum disinfection requirements of R309-200-5(7) 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 104-182, 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.

**KEY: drinking water, environmental protection,  
administrative procedures**  
**September 24, 2009** **19-4-104**  
**Notice of Continuation March 22, 2010** **63G-4-202**

**R309. Environmental Quality, Drinking Water.****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.

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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 63G-3 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.

**R309-105-4. 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.

**R309-105-6. Construction of Public Drinking Water Facilities.**

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

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall 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, shall be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-500-4(1) as new or previously un-reviewed water system.

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 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 R309-500 through R309-550 are not appropriate. Thus, the Executive Secretary may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health. In order for the Executive Secretary to consider such a request, the Division asks that it receive a written request directly from the management of the public drinking water system, preferably on system letterhead, that includes the following:

(i) citation of the specific rule for which the "exception" is being requested;

(ii) a detailed explanation, drawings may be included, of why the conditions of rule cannot be met;

(iii) what the system proposes, drawings may be included, in lieu of rule;

(iv) justification the proposed alternative will protect the public health to a similar or better degree than required by rule.

Physical conditions as well as cost may be justification for requesting an "exception-to-rule."

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

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

(ii) 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.

(iii) 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.

(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.

(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) 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) Requirements After Approval of Plans for Construction**

After the approval of plans for construction, 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.

**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.

**R309-105-8. Existing Water System Facilities.**

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(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 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 the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Executive Secretary, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

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

**R309-105-10. Operation and Maintenance Procedures.**

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health

and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

**(1) Chemical Addition**

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

(b) No chemicals or other substances shall 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 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 be taken a minimum of three times each week 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 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) New and Repaired Mains**

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall 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 Standard 61.

**(3) Reservoir Maintenance and Disinfection**

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

**(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 (see R309-515-7).

**(5) Security**

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

**(6) Seasonal Operation**

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

system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall 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.

**R309-105-12. 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 2006 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall 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 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 prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

**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 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

**R309-105-14. Operational Reports.**

(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).

(b) Certifications may rely on manufacturers data.

(2)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall 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.

**R309-105-15. 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.

**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 for systems monitoring pursuant to R309-210-9.

(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.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(f) There are additional reporting requirements in other sections of the rules, see R309-215-16(5).

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Executive Secretary within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Executive Secretary, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the

requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as CaCO<sub>3</sub>, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) 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.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of-entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

#### **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 microbiological analyses and turbidity 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, Executive Secretary 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 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the

date that you submitted your IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Executive Secretary approves alternative monitoring locations, you must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. You must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

#### **R309-105-18. Emergencies.**

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

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

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

(c) 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) 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) 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) 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 then contact the Division 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 shall be realistically considered.

**KEY: drinking water, watershed management**

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**Notice of Continuation March 22, 2010**

**19-4-104**

**63G-4-202**



**R309. Environmental Quality, Drinking Water.****R309-110. Administration: Definitions.****R309-110-1. Purpose.**

The purpose of this rule is to define certain terms and expressions that are utilized throughout all rules under R309. Collectively, those rules govern the administration, monitoring, operation and maintenance of public drinking water systems as well as the design and construction of facilities within said systems.

**R309-110-2. 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 63G-3 of the same, known as the Administrative Rulemaking Act.

**R309-110-3. Acronyms.**

As used in R309:

"AF" means Acre Foot.  
 "AWOP" means Area Wide Optimization Program.  
 "AWWA" means American Water Works Association.  
 "BAT" means Best Available Technology.  
 "C" means Residual Disinfectant Concentration.  
 "CCP" means Composite Correction Program.  
 "CCR" means Consumer Confidence Report.  
 "CEU" means Continuing Education Unit.  
 "CFE" means Combined Filter Effluent.  
 "CFR" means Code of Federal Regulations.  
 "cfs" means Cubic Feet Per Second.  
 "CPE" means Comprehensive Performance Evaluation.  
 "CT" means Residual Concentration multiplied by Contact Time.  
 "CTA" means Comprehensive Technical Assistance.  
 "CWS" means Community Water System.  
 "DBPs" means Disinfection Byproducts.  
 "DE" means Diatomaceous Earth.  
 "DTF" means Data Transfer Format.  
 "DWSP" means Drinking Water Source Protection.  
 "EP" means Entry Point.  
 "EPA" means Environmental Protection Agency.  
 "ERC" means Equivalent Residential Connection.  
 "FBRR" means Filter Backwash Recycling Rule.  
 "fps" means Feet Per Second  
 "FR" means Federal Register.  
 "gpd" means Gallons Per Day.  
 "gpm" means Gallons Per Minute.  
 "gpm/sf" means Gallons Per Minute Per Square Foot.  
 "GWR" means Ground Water Rule.  
 "GWUDI" means Ground Water Under Direct Influence of Surface Water.  
 "HAA5s" means Haloacetic Acids (Five).  
 "HPC" means Heterotrophic Plate Count.  
 "ICR" means Information Collection Rule of 40 CRF 141 subpart M.  
 "IESWTR" means Interim Enhanced Surface Water Treatment Rule.  
 "IFE" means Individual Filter Effluent.  
 "LT1ESWTR" means Long Term 1 Enhanced Surface Water Treatment Rule.  
 "LT2ESWTR" means Long Term 2 Enhanced Surface Water Treatment Rule.  
 "MCL" means Maximum Contaminant Level.  
 "MCLG" means Maximum Contaminant Level Goal.  
 "M and R" means Monitoring and Reporting.  
 "MDBP" means Microbial-Disinfection Byproducts.  
 "M/DBP Cluster" means Microbial-Disinfectants/Disinfection Byproducts Cluster.  
 "MG" means Million Gallons.

"MGD" means Million Gallons Per Day.

"mg/L" means Milligrams Per Liter

"MRDL" means Maximum Residual Disinfectant Level.

"MRDLG" means Maximum Residual Disinfectant Level

Goal.

"NCWS" means Non-Community Water System.

"NTNC" means Non-Transient Non-Community.

"NTU" means Nephelometric Turbidity Unit.

"PN" means Public Notification.

"POE" means Point-of-Entry.

"POU" means Point-of-Use.

"PWS" means Public Water System.

"PWS-ID" means Public Water System Identification

Number.

"RTC" means Return to Compliance.

"SDWA" means Safe Drinking Water Act.

"SDWIS/FED" means Safe Drinking Water Information

System/Federal Version.

"SDWIS/STATE" means Safe Drinking Water Information

System/State Version.

"SNC" means Significant Non-Compliance.

"Stage 1 DBPR" means Stage 1 Disinfectants and Disinfection Byproducts Rule.

"Stage 2 DBPR" means Stage 2 Disinfectants and Disinfection Byproducts Rule.

"Subpart H" means A PWS using SW or GWUDI.

"Subpart P" means A PWS using SW or GWUDI and serving at least 10,000 people.

"Subpart S" means Provisions of 40 CRF 141 subpart S commonly referred to as the Information Collection Rule.

"Subpart T" means A PWS using SW or GWUDI and serving less than 10,000 people.

"SUVA" means Specific Ultraviolet Absorption.

"SW" means Surface Water.

"SWAP" means Source Water Assessment Program.

"SWTR" means Surface Water Treatment Rule.

"T" means Contact Time.

"TA" means Technical Assistance.

"TCR" means Total Coliform Rule.

"TNCWS" means Transient Non-Community Water System.

"TNTC" means Too Numerous To Count.

"TOC" means Total Organic Carbon.

"TT" means Treatment Technique.

"TTHM" means Total Trihalomethanes.

"UAC" means Utah Administrative Code.

"UPDWR" means Utah Public Drinking Water Rules (R309 of the UAC).

"WCP" means Watershed Control Program.

"WHP" means Wellhead Protection.

**R309-110-4. Definitions.**

As used in R309:

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

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

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

effective openings for a single wall, or a distance greater than four times the diameter of the effective opening for two intersecting walls. This distance shall be three times the diameter of the effective opening where walls or obstructions are closer than the distances indicated above.

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

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

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

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

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

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

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

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

"Bag Filters" are pressure-driven separation devices that remove particle matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank Filtration" is a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

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

"Board" means the Drinking Water Board.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town,

improvement district, taxing district or any other governmental subdivision or public corporation for the State.

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

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

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

"Cartridge filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

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

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

"Coagulation" is the process of destabilization of the charge (predominantly negative) on particulates and colloids suspended in water. Destabilization lessens the repelling character of particulates and colloids and allows them to become attached to other particles so that they may be removed in subsequent processes. The particulates in raw waters (which contribute to color and turbidity) are mainly clays, silt, viruses, bacteria, fulvic and humic acids, minerals (including asbestos, silicates, silica, and radioactive particles), and organic particulate.

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

"Combined distribution system" is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

"Commission" means the Operator Certification Commission.

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

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

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

"Comprehensive Performance Evaluation" (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with these rules, the comprehensive performance evaluation must consist of at least the following

components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

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

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

"Consecutive system" is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system or one or more consecutive systems.

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

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

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

"Controls" means any codes, ordinances, rules, and regulations that a public water system can cite as currently in effect to regulate potential contamination sources; any physical conditions which may prevent contaminants from migrating off of a site and into surface or ground water; and any site with negligible quantities of contaminants.

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

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

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

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

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

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

backpressure and backflow.

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

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

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

"CT<sub>req'd</sub>" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for Giardia lamblia or the (4-log) inactivation requirement for viruses.

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

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water Source Protection Plan(s) for ground water sources and/or surface water sources are met.

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

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

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

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

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

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

"Disinfectant Contact Time" ("T" in CT calculations) means the time in minutes that it takes water to move from the point of disinfectant application or the previous point of

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

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

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

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

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

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

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

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

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

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

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

"Dual sample set" is a set of two samples collected at the same time and same location, with one sample analyzed for

TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under R309-210-9 and determining compliance with the TTHM and HAA5 MCLs under R309-210-10.

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

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

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

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

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

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

"Equalization Storage" means that storage tank volume which stores water during periods of low demand and releases the water under periods of high demand. Equalization storage provides a buffer between the sources and distribution for the varying daily water demands. Typically, water demands are high in the early morning or evening and relatively low in the middle of the night. A rule-of-thumb for equalization storage volume is that it should be equal to one average day's use.

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

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

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

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

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

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

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

"Finished water" is water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the

distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

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

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

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

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

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

"Flowing stream" is a course of running water flowing in a definite channel.

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

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

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with R309-210-10 MCLs under R309-200-5(3)(i)(A) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

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

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

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

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

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

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

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

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

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

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

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

"Ground Water Under the Direct Influence of Surface Water" or "UDI" or "GWUDI" means any water beneath the surface of the ground with significant occurrence of insects or other macro organisms, algae, or large-diameter pathogens such as Giardia lamblia, or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence will be determined for individual sources in accordance with criteria established by the Executive Secretary. The determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well or spring construction and geology with field evaluation.

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

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

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

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

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

"Hardship Grant Assessment" means an assessment applied

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

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

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

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

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

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

"Labor Camp" shall mean one or more buildings, structures, or grounds set aside for use as living quarters for groups of migrant laborers or temporary housing facilities intended to accommodate construction, industrial, mining or demolition workers.

"Lake / reservoir" refers to a natural or man made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

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

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

Land use agreements for protection areas on publicly

owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

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

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

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

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

"Locational running annual average (LRAA)" is the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

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

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

"Major Chemical Monitoring Violation" - means that no initial background chemical sample was taken as required in R309-515-4(5).

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

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

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

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

"Master Plan" (or "System Capacity and Expansion Report") means a organized plan addressing the present and future demands that will be placed on a public drinking water system by expanding into undeveloped areas or accepting additional service contracts. As a minimum a satisfactory master plan must contain the following elements:

(a) A listing of sources including: the source name, the source type (i.e., well, spring, reservoir, stream etc.) for both existing sources and additional sources identified as needed for system expansion, the minimum reliable flow of the source in

gallons per minute, the status of the water right and the flow capacity of the water right.

(b) A listing of storage facilities including: the storage tank name, the type of material (i.e., steel, concrete etc.), the diameter, the total volume in gallons, and the elevation of the overflow, the lowest level (elevation) of the equalization volume, the fire suppression volume, and the emergency volume or the outlet.

(c) A listing of pump stations including: the pump station name and the pumping capacity in gallons per minute. Under this requirement one does not need to list well pump stations as they are provided in requirement (a) above.

(d) A listing of the various pipeline sizes within the distribution system with their associated pipe materials and, if readily available, the approximate length of pipe in each size and material category. A schematic of the distribution piping showing node points, elevations, length and size of lines, pressure zones, demands, and coefficients used for the hydraulic analysis required by (h) below will suffice.

(e) A listing by customer type (i.e., single family residence, 40 unit condominium complex, elementary school, junior high school, high school, hospital, post office, industry, commercial etc.) along with an assessment of their associated number of ERC'S.

(f) The number of connections along with their associated ERC value that the public drinking water system is committed to serve, but has not yet physically connected to the infrastructure.

(g) A description of the nature and extent of the area currently served by the water system and a plan of action to control addition of new service connections or expansion of the public drinking water system to serve new development(s). The plan shall include current number of service connections and water usage as well as land use projections and forecasts of future water usage.

(h) A hydraulic analysis of the existing distribution system along with any proposed distribution system expansion identified in (g) above.

(i) A description of potential alternatives to manage system growth, including interconnections with other existing public drinking water systems, developer responsibilities and requirements, water rights issues, source and storage capacity issues and distribution issues.

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

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

"Maximum residual disinfectant level goal" (MRDLG) means the maximum level of a disinfectant added for water

treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

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

"Membrane filtration" is a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes that common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

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

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

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

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

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

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

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

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

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

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

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

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

"New Water System" means a system that will become a

community water system or non-transient, non-community water system on or after October 1, 1999.

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

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

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

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

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

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

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

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

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

"Optimal corrosion control treatment" for the purposes of R309-210-6 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

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

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

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

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

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

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

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

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

"Plant intake" refers to the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

"Presedimentation" is a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

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

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

"Project Costs" include the cost of acquiring and constructing any drinking water project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

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

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

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

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

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

"Public Water System" (PWS) means a system, either publicly or privately owned, providing water through

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R309-210 and R309-215.

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

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

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

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

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

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

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

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

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

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

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

"Significant deficiencies" means defects in design, operation, or maintenance, or a failure or defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the Executive Secretary determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

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

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

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

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

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

"SOCs" means synthetic organic chemicals.

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

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

"Subcommittee" means the Cross Connection Control Subcommittee.

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

"Surface Water" means all water which is open to the atmosphere and subject to surface runoff (see also section R309-515-5(1)). This includes conveyances such as ditches, canals and aqueducts, as well as natural features.

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

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

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

"Susceptibility" means the potential for a PWS (as determined at the point immediately preceding treatment, or if no treatment is provided, at the entry point to the distribution system) to draw water contaminated above a demonstrated background water quality concentration through any overland or subsurface pathway. Such pathways may include cracks or fissures in or open areas of the surface water intake, and/or the wellhead, and/or the pipe/conveyance between the intake and the water distribution system or treatment.

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

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

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

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

"Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to

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

"Total Inactivation Ratio" is the sum of all the inactivation ratios calculated for a series of disinfection sequences, and is indicated or shown as: "Summation sign  $(CT_{calc})/(CT_{req'd})$ ." A total inactivation ratio equal to or greater than 1.0 is assumed to provide the required inactivation of *Giardia lamblia* cysts.  $CT_{calc}/CT_{99.9}$  equal to 1.0 provides 99.9 percent (3-log) inactivation, whereas  $CT_{calc}/CT_{90}$  equal to 1.0 only provides 90 percent (1-log) inactivation.

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

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

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

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

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

"Treatment Plant" means those facilities capable of providing any treatment to any waterserving a public drinking water system. (Examples would include but not be limited to disinfection, conventional surface water treatment, alternative surface water treatment methods, corrosion control methods, aeration, softening, etc.).

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

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

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

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

"Two-stage lime softening" is a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

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

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo

no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

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

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

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

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

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

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

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

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

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

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

"Wholesale system" is a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

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

#### **KEY: drinking water, definitions**

**September 24, 2009**

**Notice of Continuation March 22, 2010**

**19-4-104**

**63G-4-202**

**R309. Environmental Quality, Drinking Water.****R309-115. Administrative Procedures.****R309-115-1. Scope of Rule.**

(1) This rule R309-115 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 4, Utah Safe Drinking Water Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.

(2) The executive secretary, or his delegatee as authorized, may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 4, the recipient, or in some situations an intervenor, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63-46b-1(2)(k) and are not governed by sections R309-115-3 through R309-115-14 of this Rule. Initial orders and notices of violation are further described in R309-115-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R309-115.

(5) The Utah Administrative Procedures Act and this rule R309-115 also govern any other formal adjudicative proceeding before the Drinking Water Board.

**R309-115-2. Initial Proceedings.**

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) requests for variances, exemptions, and other approvals;

(e) certification of water supply operators under R309-300 and backflow technicians under R309-302;

(f) ratings of water systems under R309-400-4; and

(g) assessment of fees except as provided in R309-115-14(7).

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

**R309-115-3. Contesting an Initial Order or Notice of Violation.**

(1) Procedure. Initial orders and notices of violation, as described in R309-115-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Drinking Water Board, Division of Drinking Water, PO Box 144830, Salt Lake City, Utah 84114-4830.

(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of Subsection 63-46b-3(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R309-115-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

**R309-115-4. Designation of Proceedings as Formal or Informal.**

(1) Contest of an initial order or notice of violation resulting from proceedings described in R309-115-2(1) shall be conducted as a formal proceeding.

(2) The board in accordance with Subsection 63-46b-4(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

**R309-115-5. Notice of and Response to Request for Agency Action.**

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with Subsection 63-46b-3(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R309-115-6(3), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63-46b-6.

**R309-115-6. Parties and Intervention.**

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application or approval request that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the board has granted intervention under R309-115-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of 63-46b-9. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R309-115-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63-46b-3 may file a Request for Agency Action at the same time the person files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action

is due.

(e) A Petition to Intervene shall be granted if the requirements of 63-46b-9(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

### **R309-115-7. Conduct of Proceedings.**

(1) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63, Chapter 46b. The board is also the "presiding officer," as that term is used in Title 63, Chapter 46b, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.

(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(5) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(6) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63-

46b-10, at least fifteen business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(7) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

### **R309-115-8. Hearings.**

The presiding officer shall control the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

### **R309-115-9. Orders.**

(1) Recommended Orders of Appointed Presiding Officers.

(a) The appointed presiding officer shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(e) The board may modify this procedure with notice to all parties.

(2) Final Orders. The board shall issue a final order which shall include the information required by 63-46b-10 or 63-46b-5(1)(i).

### **R309-115-10. Stays of Orders.**

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.

(b) The board may order a stay of the order if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.

(b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R309-115-10(1)(b) are met.

#### **R309-115-11. Reconsideration.**

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the presiding officer as provided in Section 63-46b-13.

#### **R309-115-12. Disqualification of Board Members or Other Presiding Officers.**

(1) Disqualification of Board Members or Other Presiding Officers.

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

#### **R309-115-13. Declaratory Orders.**

(1) A request for a declaratory order may be filed in accordance with the provisions of Section 63-46b-21. The request shall be titled a petition for declaratory order and shall meet the requirements of 63-46b-3(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R309-115-4(2) above.

(3) The provisions of Section 63-46b-4 through 63-46b-13 apply to declaratory proceedings, as do the provisions of this Rule R309-115.

#### **R309-115-14. Miscellaneous.**

(1) Modifying Requirements of Rules. For good cause, the requirements that would otherwise be imposed by these rules may be waived or modified by order of the presiding officer.

(2) Extensions of Time. If requested before the expiration of the pertinent time limit, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R309-115-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation.

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R309-115-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. This rule does not govern requests for records or related assessment of fees. Requests for records and related assessments of fees for records are governed under the Title 63, Chapter 2, Utah Government Record Access and Management Act.

(8) Grants and loans. Determinations with respect to grants and loans made under R309-700, R309-705 and R309-352 are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

**KEY: drinking water, administrative procedures, hearings  
August 24, 2001 63-46b  
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**R309. Environmental Quality, Drinking Water.**  
**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 Contaminants.

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 63G-3 of 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.

**R309-200-4. 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 shall 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. Analytical techniques which shall be followed in making the required determinations shall be as given in 40 CFR 141 as published on July 1, 2008 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, 2008 by the Office of the Federal Register.

(5) If the water fails to meet these 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.

**R309-200-5. Primary Drinking Water Standards.**

(1) Inorganic Contaminants.

(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) 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) The maximum contaminant levels for inorganic chemicals are listed in Table 200-1.

TABLE 200-1  
 PRIMARY INORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Antimony	0.006 mg/L
2. Arsenic	0.010 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 shall be monitored and reported in accordance with the requirements of R309-205-5(3).

(2) If the sulfate level of a public (community, NTNC and non-community) water system is greater than 500 mg/L, the supplier shall 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/L.

(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); and

(d) that no adverse health effects will result.

(5) The maximum contaminant level for arsenic is 0.05 mg/L until January 23, 2006. The MCL of 0.010 mg/L is effective for the purposes of compliance on January 23, 2006.

(2) Lead and copper.

(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) is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(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) is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(c) The 90th percentile lead and copper levels shall be computed as follows:

(i) 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) The number of samples taken during the monitoring period shall be multiplied by 0.9.

(iii) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(ii) above is the 90th percentile contaminant level.

(iv) 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.

(v) For a public water system that has been allowed by the Executive Secretary to collect fewer than five samples in accordance with R309-210-6(3)(c), the sample result with the highest concentration is considered the 90th percentile value.

(3) Organic Contaminants.

The following are the maximum contaminant levels for organic chemicals. For the purposes of R309-100 through R309-R309-605, organic chemicals are divided into three categories: Pesticides/PCBs/SOCs, volatile organic contaminants (VOCs) and total trihalomethanes.

(a) Pesticides/PCBs/SOCs - The MCLs for organic contaminants listed in Table 200-2 are applicable to community water systems and non-transient, non-community water systems.

TABLE 200-2  
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).

(b) Volatile organic contaminants - The maximum contaminant levels for organic contaminants listed in Table 200-3 apply to community and non-transient non-community water systems.

TABLE 200-3  
VOLATILE ORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
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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 and Disinfectant Residuals:

(i) Community and Non-transient non-community water systems. Surface Water systems serving 10,000 or more persons shall comply with this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water shall comply with this section beginning January 1, 2004.

(A) Compliance with the disinfection byproduct MCLs listed in Table 200-4 shall be determined by the procedures listed in R309-210-8(6) until the date specified by system size listed in R309-210-10(1)(c) at which time compliance shall be determined utilizing LRAA as specified in R309-210-10(1)(d).

(ii) Transient non-community water systems. Surface water systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant shall comply with the chlorine dioxide MRDL beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant shall comply with the chlorine dioxide MRDL beginning January 1, 2004.

(iii) The maximum contaminant levels (MCLs) for disinfection byproducts are listed in Table 200-4.

TABLE 200-4  
DISINFECTION BYPRODUCTS

DISINFECTION BYPRODUCT	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(iv) The maximum residual disinfectant levels (MRDLs) are listed in Table 200-5.

TABLE 200-5  
MAXIMUM RESIDUAL DISINFECTANT LEVELS

DISINFECTANT RESIDUAL	MRDL (mg/L)
Chlorine	4.0 (as Cl <sub>2</sub> )
Chloramines	4.0 (as Cl <sub>2</sub> )
Chlorine dioxide	0.8 (as ClO <sub>2</sub> )

(v) Control of Disinfectant Residuals. Notwithstanding the MRDLs listed in Table 200-5, systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

(vi) A system that is installing GAC or membrane



technology to comply with this section may apply to the Executive Secretary for an extension of up to 24 months past the dates in paragraph (c)(i) of this section, but not beyond December 31, 2003. In granting the extension, the Executive Secretary shall set a schedule for compliance and may specify any interim measures that the system shall take. Failure to meet the schedule or interim treatment requirements constitutes a violation of Utah Public Drinking Water Rules.

(4) Radiologic Chemicals.

(a) Compliance dates. Compliance dates for combined radium-226 and -228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium: Community water systems shall comply with the MCLs listed in paragraphs (b), (c), (d), and (e) of this section beginning December 8, 2003 and compliance shall be determined in accordance with the requirements of this sub-section (4) and R309-205-7. Compliance with reporting requirements for the radionuclides under R309-220 and R309-225 is required on December 8, 2003.

(b) Combined radium-226 and -228. The maximum contaminant level for combined radium-226 and radium-228 is 5 pCi/L. The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

(c) Gross alpha particle activity (excluding radon and uranium). The maximum contaminant level for gross alpha particle activity (including radium-226 but excluding radon and uranium) is 15 pCi/L.

(d) The MCL for beta particle and photon radioactivity.

(i) 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 4 millirem/year (mrem/year).

(ii) Except for the radionuclides listed in Table 200-6, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents shall be calculated on the basis of 2 liters per day drinking water intake using the 168 hour data list in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," NBS (National Bureau of Standards) Handbook 69 as amended August 1963, U.S. Department of Commerce. Copies of this document are available from the National Technical Information Service, NTIS ADA 280 282, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-553-6847. Copies may be inspected at the Division of Drinking Water offices. 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 4 mrem/year.

TABLE 200-6  
MAN-MADE RADIONUCLIDE CONTAMINANTS

Average Annual Concentrations Assumed to Produce:  
A Total Body or Organ Dose of 4 mrem/yr

Radionuclide	Critical organ	pCi per liter
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

(e) The MCL for uranium. The maximum contaminant level for uranium is 30 ug/L.

(5) TURBIDITY

(a) All public water systems using surface water or ground water under the direct influence of surface water shall provide treatment consisting of both disinfection, as specified in R309-200-5(7)(a), and filtration treatment which complies with the requirements of paragraph (i), (ii) or (iii) of this section.

(i) Conventional filtration treatment or direct filtration.

(A) For systems using conventional filtration or direct

filtration, the turbidity level of representative samples of a system's combined filtered effluent water shall be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month, measured as specified in R309-200-4(3) and R309-215-9.

(B) The turbidity level of representative samples of a system's combined filtered effluent water shall at no time exceed 1 NTU, measured as specified in R309-200-4(3) and R309-215-9.

(C) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the Executive Secretary.

(ii) Filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration. A public water system may use a filtration technology not listed in paragraph (i) or (iii) of this section if it demonstrates to the Executive Secretary, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of R309-200-7, consistently achieves 99.9 percent removal and/or inactivation of Giardia lamblia cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of Cryptosporidium oocysts, and the Executive Secretary approves the use of the filtration technology. For each approval, the Executive Secretary will set turbidity performance requirements that the system shall meet at least 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of Giardia lamblia cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of Cryptosporidium oocysts. The turbidity level of representative samples shall at no time exceed 5.0 NTU for any treatment technique, measured as specified in R309-215-9(1)(c) and (d)

(iii) The turbidity limit for slow sand filtration and diatomaceous earth filtration shall be less than or equal to 1.0 NTU in at least 95 percent of the measurements taken each month, measured as specified in R309-215-9(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. The turbidity level of representative samples shall at no time exceed 5.0 NTU for any treatment technique, measured as specified in R309-215-9(1)(c) and (d).

(c) Ground water sources not under the direct influence of surface water:

(i) The following turbidity limit applies to community water systems only.

(ii) The limit for turbidity in drinking water from ground water sources not under the direct influence of surface sources is 5.0 NTU based on an average for two consecutive days pursuant to R309-205-8(3).

(6) MICROBIOLOGICAL QUALITY

(a) The maximum contaminant level (MCL) for microbiological contaminants for all public water systems is:

(i) 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) 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) 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 this is a violation that may pose an

acute risk to health.

(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) of this subsection shall be determined for the month in which the sample was taken.

**(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 shall 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.

(a) Each public water system that provides filtration treatment shall provide disinfection treatment as follows:

(i) The disinfection treatment shall 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) 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) 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.

$$V = ((c + d + e) / (a + b)) \times 100 \text{ where:}$$

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) 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) do not apply.

(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.

**R309-200-6. 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 200-7  
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). They are listed as secondary standards because levels in excess of these recommended levels will likely cause consumer complaint.

**R309-200-7. Treatment Techniques and Unregulated Contaminants.**

(1) The Board has determined that the minimum level of treatment as described in R309-525 and R309-530 herein or its equivalent is required for surface water sources and ground water contaminated by surface sources.

(2) For all public water systems which use surface water or ground water under the direct influence of surface water, R309-200, 215, 505, 510, 520, 525 and 530 establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) at least 99.9 percent (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer;

(b) at least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer.

(c) At least 99 percent (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(d) Compliance with the profiling and benchmark requirements under the provisions of R309-215-14.

(3) No MCLs are established herein for unregulated contaminants; viruses, protozoans and other chemical and biological substances. Some unregulated contaminants shall be monitored for in accordance with 40 CFR 141.40.

**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, daily chlorite, TOC, UV254, DOC and SUVA may, under the direction of the direct responsible charge operator, be performed by any water supplier or their representative.

(2) All samples shall 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 shall 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 shall inform the Division of Drinking Water that they intend to forward all compliance purposes samples to the Division. Each public water system shall 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.

**KEY: drinking water, quality standards, regulated contaminants**

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**19-4-104**

**Notice of Continuation March 22, 2010**

**63G-4-202**

**R309. Environmental Quality, Drinking Water.****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.

R309-205-9. Microbiological Contaminants.

**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 63G-3 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 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 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 shall 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, 2004 by the Office of the Federal Register.

(10) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

**R309-205-5. 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 R309-200-5 in accordance with this section.

(1) Monitoring shall be conducted as follows:

(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) 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) If a system draws water from more than one source and the sources are combined before distribution, the system shall 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 frequency of monitoring for asbestos shall be in accordance with R309-205-5(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); the frequency of monitoring for nitrate shall be in accordance with R309-205-5(4); the frequency of monitoring for nitrite shall be in accordance with R309-205-5(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 shall immediately notify the consumers in the area served by the public water system source in accordance with R309-220-5. Systems exercising this option shall 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 method detection limit shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) shall be based on the total number of samples collected.

(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 confirmation samples are required by the Executive Secretary, the determination of compliance will be based on the annual average of the initial MCL exceedance and any Executive Secretary required confirmation samples. If a system fails to collect the required number of samples, compliance (average concentration) shall be based on the total number of samples collected. 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) 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 to asbestos contamination in its source water, 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 potential asbestos contamination of the

water source.

(d) A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver shall monitor in accordance with the provisions of paragraph (a) of this section.

(e) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of R309-205-5(1).

(f) 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) 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.

(h) 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.

(i) If monitoring data collected after January 1, 1990 are generally consistent with the requirements of R309-205-5(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) The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in R309-200-5(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) 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) The system may apply to the Executive Secretary for a waiver from the monitoring frequencies specified in paragraph (3)(a) of this section.

(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) 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) In determining the appropriate reduced monitoring frequency, the Executive Secretary shall consider:

(i) Reported concentrations from all previous monitoring;

(ii) The degree of variation in reported concentrations; and

(iii) 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) 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) Systems which exceed the maximum contaminant levels as calculated in R309-205-5(1)(g) of this section shall monitor quarterly beginning in the next quarter after the violation occurred.

(h) The Executive Secretary may decrease the quarterly monitoring requirement to the frequencies specified in paragraphs (3)(a) and (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) 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).

(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) 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) 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) Each transient non-community water system shall monitor annually beginning January 1, 1993.

(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) 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).

(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) 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) 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) 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.**

For the purposes of R309-100 through R309-605, organic chemicals are divided into three categories: Pesticides/PCBs/SOCs, volatile organic contaminants (VOCs) and total trihalomethanes.

(1) Pesticides/PCBs/SOCs monitoring requirements.

Analysis of the contaminants listed in R309-200-5(2)(a) for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows:

(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 shall be taken 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 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 shall 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) If the system draws water from more than one source and the sources are combined before distribution, the system shall 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) Monitoring frequency:

(i) 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) 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) 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) 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) Each community and non-transient non-community water system may apply to the Executive Secretary for a waiver from the requirement of paragraph (d) of this section. A system shall reapply for a waiver for each compliance period.

(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. 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 and justifying the continuance 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 and justifying the continuance 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 of the reliably and consistently waiver.

(A) For community and non-transient non community systems serving populations greater than 3,300 people, samples for pesticides/PCBs/SOCs shall be taken in two consecutive quarters every three years.

(B) 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) If an organic contaminant listed in R309-200-5(2)(a) is detected in any sample, then:

(i) Each system shall monitor quarterly at each sampling point which resulted in a detection.

(ii) The Executive Secretary may decrease the quarterly monitoring requirement specified in paragraph (g)(i) 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) 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 shall monitor during the quarter that previously yielded the highest analytical result.

(iv) 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) of this section.

(v) 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) Systems which violate the maximum contaminant levels of R309-200-5(2)(a) as determined by paragraph (j) of this section shall 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) of this section, the system shall monitor at the frequency specified in paragraph (g)(iii) of this section.

(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 shall be averaged with the first sampling result and the average used for the compliance determination as specified by paragraph (j) of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

(j) Compliance with the maximum contaminant levels in R309-200-5(2)(a) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of the MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(ii) Systems monitoring annually or less frequently whose sample result exceeds the method detection level as defined in R309-200-4(3) must begin quarterly sampling. The system shall not be considered in violation of the MCL until it has completed one year of quarterly sampling.

(iii) If any sample result will cause the running annual

average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(iv) If a system fails to collect the required number of samples, compliance shall be based on the total number of samples collected.

(v) If a sample result is less than the method detection limit, zero shall be used to calculate the annual average.

(vi) 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) 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) 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) 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) Each public water system shall monitor at the time designated by the Executive Secretary within each compliance period.

(2) Volatile organic contaminants monitoring requirements.

Analysis of the contaminants listed in R309-200-5(2)(b) for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

(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 shall 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) 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 shall 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) If the system draws water from more than one source and the sources are combined before distribution, the system shall 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) 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 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) If the initial monitoring for contaminants listed in R309-200-5(2)(b), Table 200-3, numbers 2 through 21 as allowed in paragraph (n) has been completed by December 31, 1992, and the system did not detect any contaminant listed in R309-200-5(2)(b), then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

(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) to take one sample during each compliance period.

(g) Each community and non-transient non-community water system which does not detect a contaminant listed in R309-200-5(2)(b) may apply to the Executive Secretary for a waiver from the requirements of paragraph (d) and (e) 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) 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. 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 which justifies the continuance 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 shall justify its continuance. If a waiver is granted, monitoring for VOCs will be required at least every six years.

(i) As a condition of the waiver a groundwater system shall 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.

(j) If a contaminant listed in R309-200-5(2)(b), Table 200-3, numbers 2 through 21 is detected at a level exceeding 0.0005 mg/L in any sample, then:

(i) The system shall monitor quarterly at each sampling point which resulted in a detection.

(ii) The Executive Secretary may decrease the quarterly monitoring requirement specified in paragraph (j)(i) 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) 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 shall monitor during the quarter(s) which previously yielded the highest analytical result.

(iv) 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) of this section.

(v) 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) Systems which violate the maximum contaminant levels as required in R309-200-5(2)(b) as determined by

paragraph (m) of this section shall monitor quarterly. After a minimum of four consecutive quarterly samples shows the system is in compliance as specified in paragraph (m) 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) of this section.

(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 shall be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph (m) of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

(m) Compliance with R309-200-5(2)(b) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of a MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(ii) Systems monitoring annually or less frequently whose sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling.

(iii) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(iv) If a system fails to collect the required number of samples, compliance shall be based on the total number of samples collected.

(v) If a sample result is less than the method detection limit, zero shall be used to calculate the annual average.

(vi) 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) 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) of this section. Systems which use grandfathered samples and did not detect any contaminant listed in R309-200-5(2)(b) shall begin monitoring annually in accordance with (e) of this section.

(o) The Executive Secretary may increase required monitoring where necessary to detect variations within the system.

(p) Each public water system shall monitor at the time designated by the Executive Secretary within each compliance period.

#### **R309-205-7. Radiological Contaminants.**

(1) Monitoring and compliance requirements for gross alpha particle activity, radium-226, radium-228, and uranium.

(a) Community water systems (CWSs) shall conduct initial monitoring to determine compliance with R309-200-5(4)(b), (c), and (e) by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity in drinking water, the following detection limits are established: Gross alpha particle activity - 3 pCi/L, Radium 226 - 1 pCi/L, Radium 228 - 1 pCi/L, and Uranium - reserved.

(i) Applicability and sampling location for existing community water systems or sources. All existing CWSs using ground water, surface water or systems using both ground and



surface water (for the purpose of this section hereafter referred to as systems) shall sample at every entry point to the distribution system that is representative of all sources being used (hereafter called a sampling point) under normal operating conditions. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the Executive Secretary has designated a distribution system location, in accordance with paragraph (1)(b)(ii)(C) of this section.

(ii) Applicability and sampling location for new community water systems or sources. All new CWSs or CWSs that use a new source of water shall begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. CWSs shall conduct more frequent monitoring when ordered by the Executive Secretary in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

(b) Initial monitoring: Systems shall conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

(i) Systems without acceptable historical data, as defined below, shall collect four consecutive quarterly samples at all sampling points before December 31, 2007.

(ii) Grandfathering of data: The Executive Secretary may allow historical monitoring data collected at a sampling point to satisfy the initial monitoring requirements for that sampling point, for the following situations.

(A) To satisfy initial monitoring requirements, a community water system having only one entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(B) To satisfy initial monitoring requirements, a community water system with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(C) To satisfy initial monitoring requirements, a community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003, provided that the Executive Secretary finds that the historical data satisfactorily demonstrate that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between entry points. The Executive Secretary shall make a written finding indicating how the data conforms to these requirements.

(iii) For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the Executive Secretary may waive the final two quarters of initial monitoring for a sampling point if the results of the samples from the previous two quarters are below the detection limit.

(iv) If the average of the initial monitoring results for a sampling point is above the MCL, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Executive Secretary.

(c) Reduced monitoring: The Executive Secretary may allow community water systems to reduce the future frequency of monitoring from once every three years to once every six or nine years at each sampling point, based on the following criteria.

(i) If the average of the initial monitoring results for each

contaminant (i.e., gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in paragraph (1)(a) of this section, the system shall collect and analyze for that contaminant using at least one sample at that sampling point every nine years.

(ii) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below 1/2 the MCL, the system shall collect and analyze for that contaminant using at least one sample at that sampling point every six years. For combined radium-226 and radium-228, the analytical results shall be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit but at or below 1/2 the MCL, the system shall collect and analyze for that contaminant using at least one sample at that sampling point every six years.

(iii) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above 1/2 the MCL but at or below the MCL, the system shall collect and analyze at least one sample at that sampling point every three years. For combined radium-226 and radium-228, the analytical results shall be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above 1/2 the MCL but at or below the MCL, the system shall collect and analyze at least one sample at that sampling point every three years.

(iv) Systems shall use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (e.g., if a system's sampling point is on a nine year monitoring period, and the sample result is above 1/2 MCL, then the next monitoring period for that sampling point is three years).

(v) If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Executive Secretary.

(d) Compositing: To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. The Executive Secretary will treat analytical results from the composited as the average analytical result to determine compliance with the MCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than 1/2 MCL, the Executive Secretary may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(e) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed 5 pCi/l. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/l.

(f) The gross alpha measurement shall have a confidence interval of 95% ( $1.65s$ , where  $s$  is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, 1/2 the detection limit will be used to determine compliance and the future monitoring frequency.

(2) Monitoring and compliance requirements for beta particle and photon radioactivity. To determine compliance

with the maximum contaminant levels in R309-200-5(4)(d) for beta particle and photon radioactivity, a system shall monitor at a frequency as follows:

(a) Community water systems (both surface and ground water) designated by the Executive Secretary as vulnerable shall sample for beta particle and photon radioactivity. Systems shall collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the Executive Secretary. Systems already designated by the Executive Secretary shall continue to sample until the Executive Secretary reviews and either reaffirms or removes the designation. The following detection limits are established: Tritium - 1,000 pCi/l; Strontium-89 - 10 pCi/l; Strontium-90 - 2 pCi/l; Iodine-131 - 1 pCi/l; Cesium-134 - 10 pCi/l; Gross beta - 4 pCi/l; and other radionuclides (1/10) of the applicable limit.

(i) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 50 pCi/L (screening level), the Executive Secretary may reduce the frequency of monitoring at that sampling point to once every 3 years. Systems shall collect all samples required in paragraph (2)(a) of this section during the reduced monitoring period.

(ii) For systems in the vicinity of a nuclear facility, the Executive Secretary may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the Executive Secretary determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data shall begin monitoring at the community water system's entry point(s) in accordance with paragraph (2)(a) of this section.

(b) Community water systems (both surface and ground water) designated by the Executive Secretary as utilizing waters contaminated by effluents from nuclear facilities shall sample for beta particle and photon radioactivity. Systems shall collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the Executive Secretary. Systems already designated by the Executive Secretary as systems using waters contaminated by effluents from nuclear facilities shall continue to sample until the Executive Secretary reviews and either reaffirms or removes the designation.

(i) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

(ii) 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.

(iii) 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.

(iv) If the gross beta particle activity beta minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L, the Executive Secretary may reduce the frequency of monitoring at that sampling point to every 3 years. Systems shall collect all samples required in paragraph (2)(b) of this section during the reduced monitoring period.

(v) For systems in the vicinity of a nuclear facility, the Executive Secretary may allow the CWS to utilize

environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the Executive Secretary determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data shall begin monitoring at the community water system's entry point(s) in accordance with paragraph (2)(b) of this section.

(c) Community water systems designated by the Executive Secretary to monitor for beta particle and photon radioactivity can not apply to the Executive Secretary for a waiver from the monitoring frequencies specified in paragraph (2)(a) or (2)(b) of this section.

(d) Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity shall be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

(e) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample shall be performed to identify the major radioactive constituents present in the sample and the appropriate doses shall be calculated and summed to determine compliance with R309-200-5(4)(d)(i), using the formula in R309-200-5(4)(d)(ii). Doses shall also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(f) Systems shall monitor monthly at the sampling point(s) which exceed the maximum contaminant level in R309-200-5(4)(d) beginning the month after the exceedance occurs. Systems shall continue monthly monitoring until the system has established, by a rolling average of 3 monthly samples, that the MCL is being met. Systems who establish that the MCL is being met shall return to quarterly monitoring until they meet the requirements set forth in paragraph (2)(a)(ii) or (2)(b)(i) of this section.

(3) General monitoring and compliance requirements for radionuclides.

(a) The Executive Secretary may require more frequent monitoring than specified in paragraphs (1) and (2) of this section, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(b) Each public water system shall monitor at the time designated by the Executive Secretary during each compliance period.

(c) Compliance: Compliance with R309-200-5(4) (b) through (e) will be determined based on the analytical result(s) obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(ii) For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately.

(iii) Systems shall include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(iv) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(v) If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, 1/2 the detection limit will be used to calculate the annual average.

(d) The Executive Secretary has the discretion to delete results of obvious sampling or analytic errors.

(e) If the MCL for radioactivity set forth in R309-200-5(4)(b) through (e) is exceeded, the operator of a community water system shall give notice to the Executive Secretary pursuant to R309-105-16 and to the public as required by R309-220.

(f) To judge compliance with the maximum contaminant levels listed in R309-200-5(4), averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

**KEY: drinking water, source monitoring, compliance determinations**  
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**63G-4-202**

#### **R309-205-8. Turbidity.**

(1) 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).

(a) All community water systems shall monitor ground water sources for turbidity once every three years.

(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) Transient non-community water systems are not required to monitor ground water sources for turbidity unless so ordered by the Executive Secretary.

(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) 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. 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 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 R309-215-9.

#### **R309-205-9. Microbiological Contaminants.**

(1) Sources may be required to monitor for microbial contaminants elsewhere in these rules. For example see R309-215-16(1)(a)(ii) and R309-215-16(2).

**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 - Stage 1 Requirements.

R309-210-9. Disinfection Byproducts - Initial Distribution System Evaluations (IDSE).

R309-210-10. Disinfection Byproducts - Stage 2 Requirements.

**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 63G-3 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 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 Executive Secretary 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).

(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

Pursuant to R309-210-6(7), all water systems must provide a consumer notice of lead tap water monitoring results to persons served at the sites (taps) that are tested. Any system exceeding the lead action level shall implement the public education requirements.

(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 Executive Secretary 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 upcoming long-term change in treatment or addition of a new source as described in that section. The Executive Secretary must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. 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 Executive Secretary 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)) within six months after the end of the monitoring period during which it exceeds one of the action levels.

(ii) Step 2: Within 12 months after the end of the monitoring period during which 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)(b)). 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 the end of the monitoring period during which such system exceeds the lead or copper action level,

(B) for small systems, within 24 months after the end of the monitoring period during which 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)(b)(vii), 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 Executive Secretary 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. A public water system that has fewer than five drinking water taps, that can be used for human consumption meeting the sample site criteria of R309-210-6(6)(a) to reach the required number of sample sites listed in paragraph (c) of this section, must collect at least one sample from each tap and then must collect additional samples from those taps on different days during the monitoring period to meet the required number of sites. Alternatively the Executive Secretary may allow these public water systems to collect a number of samples less than the number of sites specified in paragraph (c) of this section, provided that 100 percent of all taps that can be used for human consumption are sampled. The Executive Secretary must approve this reduction of the minimum number of samples in writing based on a request from the system or onsite verification by the Executive Secretary. The Executive Secretary may specify sampling locations when a system is conducting reduced monitoring to ensure that fewer number of sampling sites are representative of the risk to public health as outlined in R309-210-6(3)(a).

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 to 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 Executive Secretary 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. A small or medium water system collecting fewer than five samples as specified in paragraph (c) of this section, that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the frequency of sampling to once per year. In no case can the system reduce the number of samples required below the minimum of one sample per available tap. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(B) Any water system that meets the lead action level and 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 paragraph (c) of this section if it receives written approval from the Executive Secretary. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. 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 meets the lead action level and 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)(f) 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. Samples collected once every three years shall be collected no later than every third calendar year. 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 reduce the frequency of 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 tap 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. This sampling shall begin during the period approved or designated by the State in the calendar year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating triennial monitoring.

(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 meet the lead action level during any four-month monitoring period or 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 nine 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 R309-210-6(5)(d). This standard tap water sampling shall begin no later than the six-month period beginning January 1 of the calendar year following the lead action level exceedance or water quality parameter excursion. 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. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(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 shall notify the Executive Secretary in writing in accordance with R309-210-

6(8)(a)(iii) of any upcoming long-term change in treatment or addition of a new source as described in that section. The Executive Secretary must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. 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 as the invalidated samples or, if that is not possible, at 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. 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 every 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) Executive Secretary 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. Samples collected every nine years shall be collected no later than every ninth calendar year.

(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) Any water system with a full or partial waiver shall notify the Executive Secretary in writing in accordance with R309-210-6(8)(a)(iii) of any upcoming long-term change in treatment or addition of a new source, as described in that section. The Executive Secretary must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. 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 if it has excursions for any Executive Secretary 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)(i)) no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded.

(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 Executive Secretary 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)(A) 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. The first year of lead service line replacement shall begin on the first day following the end of the monitoring period in which the action level was exceeded under paragraph (a) of this section. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs. If the Executive Secretary has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(B) Any water system resuming a lead service line replacement program after the cessation of its lead service line replacement program as allowed by paragraph (f) of this section shall update its inventory of lead service lines to include those sites that were previously determined not to require replacement through the sampling provision under paragraph (c) of this section. The system will then divide the updated number of remaining lead service lines by the number of remaining years in the program to determine the number of lines that must be replaced per year (7 percent lead service line replacement is based on a 15-year replacement program, so, for example, systems resuming lead service line replacement after previously conducting two years of replacement would divide the updated inventory by 13). For those systems that have completed a 15-year lead service line replacement program, the Executive Secretary will determine a schedule for replacing or retesting lines that were previously tested out under the replacement program when the system re-exceeds the action level.

(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)(B).

(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 to 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 either January 1 or July 1, whichever comes first, after 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 paragraph 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 start of the applicable six-month monitoring period under this paragraph shall coincide with the start of the applicable monitoring period under R309-210-6(3)(d)(iv). Compliance with Executive Secretary-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 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 this paragraph (e)(i) of this section from every six months to annually. This sampling begins during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. 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 under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (e)(i) of this section from annually to every three years. This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

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 State 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 this paragraph (e)(i) of this section from every six months to annually. This sampling begins during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. Any water system that maintains 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), during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (e)(i) of this section from annually to every three years. This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(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 Executive Secretary under R309-210-6(4)(a)(vi). Monitoring conducted every three years shall be done no later than every third calendar year.

(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 of 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 done 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/L 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 no later than six months after the end of the monitoring period during which the lead or copper action level was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the Executive Secretary has established an alternate monitoring period, the last day of that period.

(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. Triennial samples shall be collected every third calendar year.

(B) A water system using surface water (or a combination of surface and ground water) shall collect samples once during each calendar year, the first annual monitoring period to begin during the year in which the applicable Executive Secretary determination is made under paragraph (d)(i) of this section.

(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 that term is defined in R309-110-4) provided that the samples are collected no later than every ninth calendar year and 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) 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 that term is defined in R309-110-4) provided that the samples are collected no later than every ninth calendar year and 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.

All water systems must deliver a consumer notice of lead tap water monitoring results to persons served by the water system at sites that are tested, as specified in paragraph (d) of this section. 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 paragraph (a) of this section in accordance with the requirements in paragraph (b) of this section. Water systems that exceed the lead action level must sample the tap water of any customer who requests it in accordance with paragraph (c) of this section.

(a) Content of written public education materials.

(i) Community water systems and Non-transient non-community water systems. Water systems must include the following elements in printed materials (e.g., brochures and pamphlets) in the same order as listed below. In addition, paragraphs (a)(i)(A) through (B) and (a)(i)(F) must be included in the materials, exactly as written, except for the text in brackets in these paragraphs for which the water system must include system-specific information. Any additional information presented by a water system must be consistent with the information below and be in plain language that can be understood by the general public. Water systems must submit all written public education materials to the Executive Secretary prior to delivery. The Executive Secretary may require the system to obtain approval of the content of written public materials prior to delivery.

(A) IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. (INSERT NAME OF WATER SYSTEM) found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems,

especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

(B) Health effects of lead. Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development.

(C) Sources of Lead.

(I) Explain what lead is.

(II) Explain possible sources of lead in drinking water and how lead enters drinking water. Include information on home/building plumbing materials and service lines that may contain lead.

(III) Discuss other important sources of lead exposure in addition to drinking water (e.g., paint).

(D) Discuss the steps the consumer can take to reduce their exposure to lead in drinking water.

(I) Encourage running the water to flush out the lead.

(II) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(III) Explain that boiling water does not reduce lead levels.

(IV) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(V) Suggest that parents have their child's blood tested for lead.

(E) Explain why there are elevated levels of lead in the system's drinking water (if known) and what the water system is doing to reduce the lead levels in homes/buildings in this area.

(F) For more information, call us at (INSERT YOUR NUMBER) ((IF APPLICABLE), or visit our Web site at (INSERT YOUR WEB SITE HERE)). For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's Web site at "<http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.epa.gov/lead>" or contact your health care provider.

(ii) Community water systems. In addition to including the elements specified in paragraph (a)(i) of this section, community water systems must:

(A) Tell consumers how to get their water tested.

(B) Discuss lead in plumbing components and the difference between low lead and lead free.

(b) Delivery of public education materials.

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the Executive Secretary, the public education materials 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 public education materials or to request assistance in the appropriate language.

(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 conducting public education tasks under this section, must conduct the public education tasks under this section within 60 days after the end of the monitoring period in which the exceedance occurred:

(A) Deliver printed materials meeting the content

requirements of paragraph (a) of this section to all bill paying customers.

(B)(I) Contact customers who are most at risk by delivering education materials that meet the content requirements of paragraph (a) of this section to local public health agencies even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users. The water system must contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations, which may include organizations outside the service area of the water system. If such lists are provided, systems must deliver education materials that meet the content requirements of paragraph (a) of this section to all organizations on the provided lists.

(II) Contact customers who are most at risk by delivering materials that meet the content requirements of paragraph (a) of this section to the following organizations listed in aa through ff that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users:

(aa) Public and private schools or school boards.

(bb) Women Infants and Children (WIC) and Head Start programs.

(cc) Public and private hospitals and medical clinics.

(dd) Pediatricians.

(ee) Family planning clinics.

(ff) Local welfare agencies.

(III) Make a good faith effort to locate the following organizations within the service area and deliver materials that meet the content requirements of paragraph (a) of this section to them, along with an informational notice that encourages distribution to all potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the local public health agencies, even if the agencies are not located within the water system's service area:

(aa) Licensed childcare centers.

(bb) Public and private preschools.

(cc) Obstetricians-Gynecologists and Midwives.

(C) No less often than quarterly, provide information on or in each water bill as long as the system exceeds the action level for lead. The message on the water bill must include the following statement exactly as written except for the text in brackets for which the water system must include system-specific information: (INSERT NAME OF WATER SYSTEM) found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call (INSERT NAME OF WATER SYSTEM) (or visit (INSERT YOUR WEB SITE HERE)). The message or delivery mechanism can be modified in consultation with the Executive Secretary; specifically, the Executive Secretary may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

(D) Post material meeting the content requirements of paragraph (a) of this section on the water system's Web site if the system serves a population greater than 100,000.

(E) Submit a press release to newspaper, television and radio stations.

(F) In addition to paragraphs (b)(ii)(A) through (E) of this section, systems must implement at least three activities from one or more categories listed below. The educational content and selection of these activities must be determined in consultation with the Executive Secretary.

(I) Public Service Announcements.

(II) Paid advertisements.

- (III) Public Area Information Displays.
- (IV) Emails to customers.
- (V) Public Meetings.
- (VI) Household Deliveries.
- (VII) Targeted Individual Customer Contact.
- (VIII) Direct material distribution to all multi-family homes and institutions.
- (VIII) Other methods approved by the Executive Secretary.

(G) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the Executive Secretary has established an alternate monitoring period, the last day of that period.

(iii) As long as a community water system exceeds the action level, it must repeat the activities pursuant to paragraph (b)(ii) of this section as described in paragraphs (b)(iii)(A) through (D) of this section.

(A) A community water system shall repeat the tasks contained in paragraphs (b)(ii)(A), (B) and (F) of this section every 12 months.

(B) A community water system shall repeat tasks contained in paragraph (b)(ii)(C) of this section with each billing cycle.

(C) A community water system serving a population greater than 100,000 shall post and retain material on a publicly accessible Web site pursuant to paragraph (b)(ii)(D) of this section.

(D) The community water system shall repeat the task in paragraph (b)(ii)(E) of this section twice every 12 months on a schedule agreed upon with the Executive Secretary. The Executive Secretary can allow activities in paragraph (b)(ii) of this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the Executive Secretary in advance of the 60-day deadline.

(iv) Within 60 days after the end of the monitoring period in which the exceedance occurred (unless it already is repeating public education tasks pursuant to paragraph (b)(v) of this section), a non-transient non-community water system shall deliver the public education materials specified by paragraph (a) of this section 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.

(C) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the Executive Secretary has established an alternate monitoring period, the last day of that period.

(v) A non-transient non-community water system shall repeat the tasks contained in paragraph (b)(iv) of this section at least once during each calendar year in which the system exceeds the lead action level. The Executive Secretary can allow activities in (b)(iv) of this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the Executive Secretary in advance of the 60-day deadline.

(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 Executive Secretary approval) to use only the text specified in paragraph (a)(i) of this section in lieu of the text in paragraphs (a)(i) and (a)(ii) of this section and to perform the tasks listed in paragraphs (b)(iv) and (b)(v) of this section in lieu of the tasks in paragraphs (b)(ii) and (b)(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 community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(A) With respect to the requirements of paragraph (b)(ii)(F) of this section, a system serving 3,300 or fewer must implement at least one of the activities listed in that paragraph.

(B) With respect to the requirements of paragraph (b)(ii)(B) of this section, a system serving 3,300 or fewer people may limit the distribution of the public education materials required under that paragraph to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(C) With respect to the requirements of paragraph (b)(ii)(E) of this section, the Executive Secretary may waive this requirement for systems serving 3,300 or fewer persons as long as system distributes notices to every household served by the system.

(c) 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.

(d) Notification of results.

(i) Reporting requirement. All water systems must provide a notice of the individual tap results from lead tap water monitoring carried out under the requirements of R309-210-6(3) to the persons served by the water system at the specific sampling site from which the sample was taken (e.g., the occupants of the residence where the tap was tested).

(ii) Timing of notification. A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system learns of the tap monitoring results.

(iii) Content. The consumer notice must include the results of lead tap water monitoring for the tap that was tested, an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from R309-225-5(3).

(iv) Delivery. The consumer notice must be provided to persons served at the tap that was tested, either by mail or by another method approved by the Executive Secretary. For example, upon approval by the Executive Secretary, a non-transient non-community water system could post the results on a bulletin board in the facility to allow users to review the information. The system must provide the notice to customers at sample taps tested, including consumers who do not receive water bills.

## (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). For monitoring periods with a duration less than six months, the end of the monitoring period is the last date samples can be collected during that period as specified in R309-210-6(3) and R309-210-6(5).

(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(7)(b)(vii), 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 Executive Secretary approval of non-first-draw samples sites selected by the system pursuant to R309-210-6(3)(b)(v).

(iii) At a time specified by the Executive Secretary, or if no specific time is designated by the Executive Secretary, then as early as possible prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control under R309-210-6(2)(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 submit written documentation to the Executive Secretary describing the change or addition. The Executive Secretary must review and approve

the addition of a new source or long-term change in treatment before it is implemented by the water system. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (e.g., alum to ferric chloride), and switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(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) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in R309-210-6(4)(c)(i), the system must submit written documentation to the Executive Secretary of the material evaluation conducted as required in R309-210-6(3)(a), identify the initial number of lead service lines in its distribution system at the time the system exceeds the lead action level, and provide the system's schedule for annually replacing at least 7 percent of the initial number of lead service lines in its distribution system.

(ii) No later than 12 months after the end of a monitoring period in which 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 and/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 paragraph (e)(i) of this section (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 Executive Secretary, 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 in accordance with R309-210-6(7)(b), 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 the delivery requirements in R309-210-6(7)(b); 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.

(iii) No later than 3 months following the end of the monitoring period, each system must mail a sample copy of the consumer notification of tap results to the Executive Secretary along with a certification that the notification has been distributed in a manner consistent with the requirements of R309-210-6(7)(d).

(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 - Stage 1 Requirements.**

(1) General requirements. The requirements in this subsection establish criteria under which community and non-transient non-community water systems that add a chemical disinfectant to the water in any part of the drinking water treatment process, shall modify their practices to meet MCLs and MRDLs in R309-200-5(3)(c) and meet treatment technique requirements in R309-215-12 and 13. The requirements of this sub-section also establish criteria under which transient non-community water systems that use chlorine dioxide shall modify their practices to meet MRDLs for chlorine dioxide in R309-200-5(3)(c).

(a) Compliance dates.

(i) Community and Non-transient non-community water systems. Surface water systems serving 10,000 or more persons must comply with this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this section beginning January 1, 2004.

(ii) Transient non-community water systems. Surface water systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2004.

(b) Systems must take all samples during normal operating

conditions.

(c) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with approval from the Executive Secretary.

(d) Failure to monitor in accordance with the monitoring plan required under paragraph (5) of this section is a monitoring violation.

(e) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(f) Systems may use only data collected under the provisions of this section or the federal Information Collection Rule, (40 CFR, Part 141, Subpart M) to qualify for reduced monitoring.

(2) Monitoring requirements for disinfection byproducts.

(a) TTHMs and HAA5s

(i) Routine monitoring. Systems must monitor at the frequency indicated in the following:

(A) If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

(B) Surface water systems serving at least 10,000 persons shall take four water samples per quarter per treatment plant. At least 25 percent of all samples collected each quarter shall be at locations representing maximum residence time. The remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.

(C) Surface water systems serving from 500 to 9,999 persons shall take one water sample per quarter per treatment plant at a locations representing maximum residence time.

(D) Surface water systems serving fewer than 500 persons shall take one sample per year per treatment plant during month of warmest water temperature at a location representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (2)(a)(v) of this section.

(E) Systems using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons shall take one water sample per quarter per treatment plant at a locations representing maximum residence time.

(F) Systems using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons shall take one sample per year per treatment plant during month of warmest water temperature at a location representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in paragraph (2)(a)(v) of this section for reduced monitoring.

(ii) Systems may reduce monitoring, except as otherwise provided, if the system has monitored for at least one year and is in accordance with the following paragraphs. Any Surface

water system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.

(A) A surface water system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, of less than or equal to 4.0 mg/L and has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time.

(B) A surface water system serving from 500 to 9,999 persons which has a source water annual average TOC level, before any treatment, of less than or equal to 4.0 mg/L and has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(C) A system using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons that has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(D) A system using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons that has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L for two consecutive years or has a TTHM annual average of less than or equal to 0.020 mg/L and has a HAA5 annual average of less than or equal to 0.015 mg/L for one year may reduce monitoring to one sample per treatment plant per three year monitoring cycle at a distribution system location reflecting maximum residence time during the month of warmest water temperature, with the three-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring.

(iii) Monitoring requirements for source water TOC in order to qualify for reduced monitoring for TTHM and HAA5 under paragraph (2)(a)(ii) of this section, surface water systems not monitoring under the provisions of paragraph (d) of this section must take monthly TOC samples every 30 days at a location prior to any treatment, beginning April 1, 2008 or earlier, if specified by the Executive Secretary. In addition to meeting other criteria for reduced monitoring in paragraph (2)(a)(ii) of this section, the source water TOC running annual average must be equal to or less than 4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under paragraph (2)(a)(ii) of this section, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

(iv) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (2)(a)(i) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHM or HAA5, respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual

average is greater than 0.080 mg/L or the HAA5 annual average is greater than 0.060 mg/L, the system must go to the increased monitoring identified in paragraph (2)(a)(i) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(v) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring their TTHM annual average is less than or equal to 0.060 mg/L and their HAA5 annual average is less than or equal to 0.045 mg/L.

(vi) The Executive Secretary may return a system to routine monitoring when appropriate to protect public health.

(b) Chlorite. Community and non-transient non-community water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(i) Routine monitoring.

(A) Daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by paragraph (2)(b)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(B) Monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (2)(b)(ii) of this section to meet the requirement for monitoring in this paragraph.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Reduced monitoring.

(A) Chlorite monitoring at the entrance to the distribution system required by paragraph (2)(b)(i)(A) of this section may not be reduced.

(B) Chlorite monitoring in the distribution system required by paragraph (2)(b)(i)(B) of this section may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under paragraph (2)(b)(i)(B) of this section has exceeded the chlorite MCL and the system has not been required to conduct monitoring under paragraph (2)(b)(ii) of this section. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken monthly in the distribution system under paragraph (2)(b)(i)(B) of this section exceeds the chlorite MCL or the system is required to conduct monitoring under paragraph (2)(b)(ii) of this section, at which time the system must revert to routine monitoring.

(c) Bromate.

(i) Routine monitoring. Community and nontransient noncommunity systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(ii) Reduced monitoring.

(A) Until March 31, 2009, systems required to analyze for



bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system must resume routine monitoring required by paragraph (2)(c)(i) of this section in the following month.

(B) Beginning April 1, 2009, systems may no longer use the provisions of paragraph (2)(c)(ii)(A) of this section to qualify for reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration is equal to or less than 0.0025 mg/L based on monthly bromate measurements under paragraph (2)(c)(i) of this section for the most recent four quarters, with samples analyzed using Method 317.0 Revision 2.0, 326.0 or 321.8. If a system has qualified for reduced bromate monitoring under paragraph (2)(c)(ii)(A) of this section, that system may remain on reduced monitoring as long as the running annual average of quarterly bromate samples is less than or equal to 0.0025 mg/L based on samples analyzed using Method 317.0 Revision 2.0, 326.0 or 321.8. If the running annual average bromate concentration is greater than 0.0025 mg/L, the system must resume routine monitoring required by (2)(c)(i) of this section.

(3) Monitoring requirements for disinfectant residuals.

(a) Chlorine and chloramines.

(i) Routine monitoring. Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level in distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in R309-210-5. The Executive Secretary may allow a public water system which uses both disinfected and undisinfected sources to take disinfectant residual samples at points other than the total coliform sampling points if the Executive Secretary determines that such sampling points are more representative of treated (disinfected) water quality within the distribution system. Water systems shall take a minimum of three residual disinfectant level samples each week.

(ii) In addition, ground water systems shall take the following readings at each facility a minimum of three times a week: the total volume of water treated; the type and amount of disinfectant used in treating the water (clearly indicating the weight if gas feeders are used, or the percent solution and volume fed if liquid feeders are used); and the setting of the rotometer valve or injector pump. Surface water systems may use the results of residual disinfectant concentration sampling conducted under R309-215-10(3) for systems which filter, in lieu of taking separate samples.

(iii) Reduced monitoring. Monitoring may not be reduced.

(b) Chlorine Dioxide.

(i) Routine monitoring. Community, nontransient noncommunity, and transient noncommunity water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by paragraph (3)(b)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to

maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Reduced monitoring. Chlorine dioxide monitoring may not be reduced.

(4) Bromide. Systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(5) Monitoring plans. Each system required to monitor under this section must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the Executive Secretary and the general public no later than 30 days following the applicable compliance dates in R309-210-8(1)(a). All Surface water systems serving more than 3300 people must submit a copy of the monitoring plan to the Executive Secretary no later than the date of the first report required under R309-105-16(2). The Executive Secretary may also require the plan to be submitted by any other system. After review, the Executive Secretary may require changes in any plan elements. The plan must include at least the following elements.

(a) Specific locations and schedules for collecting samples for any parameters included in this subpart.

(b) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

(c) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, the Executive Secretary may modify the monitoring requirements treating the systems as a single distribution system, however, the sampling plan shall reflect the entire distribution system of all interconnected systems.

(6) Compliance requirements.

(a) General requirements.

(i) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(ii) All samples taken and analyzed under the provisions of this section shall be included in determining compliance, even if that number is greater than the minimum required.

(iii) If, during the first year of monitoring under R309-210-8, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(b) Disinfection byproducts.

(i) TTHMs and HAA5.

(A) For systems monitoring quarterly, compliance with

MCLs in R309-200-5(3)(c) shall be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by R309-210-8(2)(a).

(B) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of R309-210-8(2)(a) does not exceed the MCLs in R309-200-5(3)(c). If the average of these samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(C) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(D) If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period shall be based on an average of the available data.

(ii) Chlorite. Compliance shall be based on an arithmetic average of each three sample set taken in the distribution system as prescribed by R309-210-8(2)(b)(i)(B) and (2)(b)(ii). If the arithmetic average of any three sample sets exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(iii) Bromate. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by R309-210-8(2)(c). If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16. If a PWS fails to complete 12 consecutive months' monitoring, compliance with the MCL for the last four-quarter compliance period shall be based on an average of the available data.

(c) Disinfectant residuals.

(i) Chlorine and chloramines.

(A) Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under R309-210-8(3)(a). If the average covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(B) In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to R309-105-16 shall clearly indicate which residual disinfectant was analyzed for each sample.

(ii) Chlorine dioxide.

(A) Acute violations. Compliance shall be based on consecutive daily samples collected by the system under R309-210-8(3)(b). If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the

MRDL and shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and shall notify the public pursuant to the procedures for acute health risks in R309-220-5. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system shall notify the public of the violation in accordance with the provisions for acute violations under R309-220-5 in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(B) Nonacute violations. Compliance shall be based on consecutive daily samples collected by the system under R309-210-8(3)(b). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for nonacute health risks in R309-220-6 in addition to reporting to the Executive Secretary pursuant to R309-105-16. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system shall notify the public of the violation in accordance with the provisions for nonacute violations under R309-220-6 in addition to reporting to the Executive Secretary pursuant to R309-105-16.

#### **R309-210-9. Disinfection Byproducts - Initial Distribution System Evaluations.**

(1) General requirements.

(a) The requirements of this sub-section establish monitoring and other requirements for identifying R309-210-10 compliance monitoring locations for determining compliance with maximum contaminant levels for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5). The water system must use an Initial Distribution System Evaluation (IDSE) to determine locations with representative high TTHM and HAA5 concentrations throughout the distribution system. IDSEs are used in conjunction with, but separate from, R309-210-8 compliance monitoring, to identify and select R309-210-10 compliance monitoring locations.

(b) Applicability. Community water systems that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light; or if the system is a non-transient non-community water systems that serves at least 10,000 people and uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light are subject to these requirements.

(c) Schedule. The water system must comply with the requirements of this subpart on the schedule in paragraph (c)(i).

(i) For water systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(A) For water systems that serve a population greater than or equal to 100,000:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by October 1, 2006.

(II) The water system must complete the standard monitoring or system specific study by September 30, 2008.

(III) The water system must submit the IDSE report to the Executive Secretary by January 1, 2009.

(B) For water systems that serve a population from 50,000 to 99,999:

(I) The water system must submit a standard monitoring

plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by April 1, 2007.

(II) The water system must complete the standard monitoring or system specific study by March 31, 2009.

(III) The water system must submit the IDSE report to the Executive Secretary by July 1, 2009.

(C) For water systems that serve a population from 10,000 to 49,999:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by October 1, 2007.

(II) The water system must complete the standard monitoring or system specific study by September 30, 2009.

(III) The water system must submit the IDSE report to the Executive Secretary by January 1, 2010.

(D) For community water systems that serve a population less than 10,000:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by April 1, 2008.

(II) The water system must complete the standard monitoring or system specific study by March 31, 2010.

(III) The water system must submit the IDSE report to the Executive Secretary by July 1, 2010.

(ii) For other water systems that are part of a combined distribution system:

(A) For wholesale systems or consecutive systems:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary at the same time as the system with the earliest compliance date in the combined distribution system.

(II) The water system must complete the standard monitoring or system specific study at the same time as the system with the earliest compliance date in the combined distribution system.

(III) The water system must submit the IDSE report to the Executive Secretary by at the same time as the system with the earliest compliance date in the combined distribution system.

(iii) If, within 12 months after the date the water system is required to submit the information in (i)(A)(I), (B)(I), (C)(I), (D)(I) and (ii)(A)(I) above, the Executive Secretary does not approve the water system plan or notify the water system that it has not yet completed its review, the water system may consider the plan that was submitted as approved. The water system must implement that plan and must complete standard monitoring or a system specific study no later than the date identified in (i)(A)(II), (B)(II), (C)(II), (D)(II) and (ii)(A)(II) above.

(iv) The water system must submit the 40/30 certification under R309-210-9(4) by the date identified in (i)(A)(II), (B)(II), (C)(II), (D)(II) and (ii)(A)(II) above.

(v) If, within three months after the date identified in (i)(A)(III), (B)(III), (C)(III), (D)(III) and (ii)(A)(III) above (nine months after the date identified in this column if the water system must comply on the schedule in paragraph (c)(i)(C) of this section), the Executive Secretary does not approve the IDSE report or notify the water system that it has not yet completed its review, the water system may consider the report submitted as approved and must implement the recommended R309-210-10 monitoring as required.

(vi) For the purpose of the schedule in paragraph (c)(i) through (c)(v) of this section, the Executive Secretary may determine that the combined distribution system does not include certain consecutive systems based on factors such as

receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Executive Secretary may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) The water system must conduct standard monitoring that meets the requirements in R309-210-9(2), or a system specific study that meets the requirements in R309-210-9(3), or certify to the Executive Secretary that the water system meet 40/30 certification criteria under R309-210-9(4), or qualify for a very small system waiver under R309-210-9(5).

(i) The water system must have taken the full complement of routine TTHM and HAA5 compliance samples required of a system with the population and source water under R309-210-8 (or the water system must have taken the full complement of reduced TTHM and HAA5 compliance samples required of a system with the population and source water under R309-210-8 if the water system meets reduced monitoring criteria under R309-210-8) during the period specified in R309-210-9(4)(a) to meet the 40/30 certification criteria in R309-210-9(4) the water system must have taken TTHM and HAA5 samples under R309-200-4(3) and R309-210-8 to be eligible for the very small system waiver in R309-210-9(5).

(ii) If the water system has not taken the required samples, the water system must conduct standard monitoring that meets the requirements in R309-210-9(2), or a system specific study that meets the requirements in R309-210-9(3).

(e) The water system must use only the analytical methods specified in R309-200-4(3), or otherwise approved by EPA for monitoring under this subpart, to demonstrate compliance with the requirements of this subpart.

(f) IDSE results will not be used for the purpose of determining compliance with MCLs in R309-200-5(3)(c).

(2) Standard monitoring.

(a) Standard monitoring plan. The standard monitoring plan must comply with paragraphs (a)(i) through (a)(iv) of this section. The water system must prepare and submit the standard monitoring plan to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) The standard monitoring plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected R309-210-8 compliance monitoring.

(ii) The standard monitoring plan must include justification of standard monitoring location selection and a summary of data the water system relied on to justify standard monitoring location selection.

(iii) The standard monitoring plan must specify the population served and system type (surface water or ground water).

(iv) The water system must retain a complete copy of the standard monitoring plan submitted under this paragraph (a), including any Executive Secretary modification of the standard monitoring plan, for as long as the water system is required to retain the IDSE report under R309-105-17(8).

(b) Standard monitoring.

(i) The water system must monitor as indicated in paragraph (b)(i). The water system must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5. The water system must conduct one monitoring period during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. The water system must review available

compliance, study, or operational data to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

(A) Surface water systems serving less than 500 population which are consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(B) Surface water systems serving less than 500 population which are non-consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(C) Surface water systems serving between 500 to 3,300 population which are consecutive systems.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(D) Surface water systems serving between 500 to 3,300 population which are non-consecutive systems.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(E) Surface water systems serving between 3,301 to 9,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(II) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(IV) One dual sample set must be taken at an average residence time of the disinfected water in the distribution system.

(F) Surface water systems serving between 10,000 to 49,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. Eight dual samples sets must be collected per monitoring period.

(II) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Two dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(G) Surface water systems serving between 50,000 to 249,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 16 dual samples sets must be collected

per monitoring period.

(II) Five dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Four dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Three dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(H) Surface water systems serving between 250,000 to 999,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 24 dual samples sets must be collected per monitoring period.

(II) Eight dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Six dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Six dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Four dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(I) Surface water systems serving between 1,000,000 to 4,999,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 32 dual samples sets must be collected per monitoring period.

(II) Ten dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Eight dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Eight dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Six dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(J) Surface water systems serving 5,000,000 or more population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 40 dual samples sets must be collected per monitoring period.

(II) Twelve dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Ten dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Ten dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Eight dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(K) Ground water systems serving less than 500 population which are consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(L) Ground water systems serving less than 500 population which are non-consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5

location in the distribution system.

(M) Ground water systems serving between 500 to 9,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(N) Ground water systems serving between 10,000 to 99,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Six dual samples sets must be collected per monitoring period.

(II) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) One dual sample set must be taken at an average residence time of the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(O) Ground water systems serving between 100,000 to 499,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(II) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) One dual sample set must be taken at an average residence time of the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(P) Ground water systems serving 500,000 or greater population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Twelve dual samples sets must be collected per monitoring period.

(II) Four dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Two dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Two dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(Q) A dual sample set (i.e., a TTHM and an HAA5 sample) must be taken at each monitoring location during each monitoring period.

(R) The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature.

(ii) The water system must take samples at locations other than the existing R309-210-8 monitoring locations. Monitoring locations must be distributed throughout the distribution system.

(iii) If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, the water system must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, the water system must take samples at

entry points to the distribution system having the highest annual water flows.

(iv) The system monitoring under this paragraph (b) may not be reduced under the provisions of R309-105-5(2).

(c) IDSE report. The IDSE report must include the elements required in paragraphs (c)(i) through (c)(iv) of this section. The water system must submit the IDSE report to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) The IDSE report must include all TTHM and HAA5 analytical results from R309-210-8 compliance monitoring and all standard monitoring conducted during the period of the IDSE as individual analytical results and LRAAs presented in a tabular or spreadsheet format acceptable to the Executive Secretary. If changed from the standard monitoring plan submitted under paragraph (a) of this section, the report must also include a schematic of the distribution system, the population served, and system type (surface water or ground water).

(ii) The IDSE report must include an explanation of any deviations from the approved standard monitoring plan.

(iii) The water system must recommend and justify R309-210-10 compliance monitoring locations and timing based on the protocol in R309-210-9(6).

(iv) The water system must retain a complete copy of the IDSE report submitted under this section for 10 years after the date that the water system submitted the report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that the water system recommended in the IDSE report or if the Executive Secretary approves alternative monitoring locations, the water system must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. The water system must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(3) System specific studies.

(a) System specific study plan. The water system specific study plan must be based on either existing monitoring results as required under paragraph (a)(i) of this section or modeling as required under paragraph (a)(ii) of this section. The water system must prepare and submit the system specific study plan to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) Existing monitoring results. The water system may comply by submitting monitoring results collected before the water system is required to begin monitoring under R309-210-9(1)(c). The monitoring results and analysis must meet the criteria in paragraphs (a)(i)(A) and (a)(i)(B) of this section.

(A) Minimum requirements.

(I) TTHM and HAA5 results must be based on samples collected and analyzed in accordance with R309-200-4(3). Samples must be collected no earlier than five years prior to the study plan submission date.

(II) The monitoring locations and frequency must meet the conditions identified in this paragraph (a)(i)(A)(II). Each location must be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results must include all R309-210-8 compliance monitoring results plus additional monitoring results as necessary to meet minimum sample requirements.

(III) Surface water systems serving a population less than 500 shall have data from:

(aa) three monitoring locations; and

(bb) three samples for each TTHM and HAA5.

(IV) Surface water systems serving a population between 500 to 3,300 shall have data from:

(aa) three monitoring locations; and

(bb) nine samples each for TTHM and HAA5.

(V) Surface water systems serving a population between 3,301 to 9,999 shall have data from:

- (aa) six monitoring locations; and
- (bb) 36 samples each for TTHM and HAA5.

(VI) Surface water systems serving a population between 10,000 to 49,999 shall have data from:

- (aa) 12 monitoring locations; and
- (bb) 72 samples each for TTHM and HAA5.

(VII) Surface water systems serving a population between 50,000 to 249,999 shall have data from:

- (aa) 24 monitoring locations; and
- (bb) 144 samples each for TTHM and HAA5.

(VIII) Surface water systems serving a population between 250,000 to 999,999 shall have data from:

- (aa) 36 monitoring locations; and
- (bb) 216 samples each for TTHM and HAA5.

(IX) Surface water systems serving a population between 1,000,000 to 4,999,999 shall have data from:

- (aa) 48 monitoring locations; and
- (bb) 288 samples each for TTHM and HAA5.

(X) Surface water systems serving a population 5,000,000 or greater shall have data from:

- (aa) 60 monitoring locations; and
- (bb) 360 samples each for TTHM and HAA5.

(XI) Ground water systems serving a population less than 500 shall have data from:

- (aa) three monitoring locations; and
- (bb) three samples for each TTHM and HAA5.

(XII) Ground water systems serving a population between 500 to 9,999 shall have data from:

- (aa) three monitoring locations; and
- (bb) nine samples each for TTHM and HAA5.

(XIII) Ground water systems serving a population between 10,000 to 99,999 shall have data from:

- (aa) 12 monitoring locations; and
- (bb) 48 samples each for TTHM and HAA5.

(XIV) Ground water systems serving a population between 100,000 to 499,999 shall have data from:

- (aa) 18 monitoring locations; and
- (bb) 72 samples each for TTHM and HAA5.

(XV) Ground water systems serving a population of 500,000 or greater shall have data from:

- (aa) 24 monitoring locations; and
- (bb) 96 samples each for TTHM and HAA5.

(B) Reporting monitoring results. The water system must report the information in this paragraph (a)(i)(B).

(I) The water system must report previously collected monitoring results and certify that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent R309-210-8 results.

(II) The water system must certify that the samples were representative of the entire distribution system and that treatment, and distribution system have not changed significantly since the samples were collected.

(III) The study monitoring plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring.

(IV) The water system specific study plan must specify the population served and system type (surface water or ground water).

(V) The water system must retain a complete copy of the system specific study plan submitted under this paragraph (a)(i), including any Executive Secretary modification of the system specific study plan, for as long as the water system is required to retain the IDSE report under paragraph (b)(v) of this section.

(VI) If the water system submits previously collected data that fully meet the number of samples required under paragraph (a)(i)(A)(II) of this section and the Executive Secretary rejects some of the data, the water system must either conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves or conduct standard monitoring under R309-210-9(2).

(ii) Modeling. The water system may comply through analysis of an extended period simulation hydraulic model. The extended period simulation hydraulic model and analysis must meet the criteria in this paragraph (a)(ii).

(A) Minimum requirements.

(I) The model must simulate 24 hour variation in demand and show a consistently repeating 24 hour pattern of residence time.

(II) The model must represent the criteria listed in paragraphs (a)(ii)(A)(II)(aa) through (ii) of this section.

- (aa) 75% of pipe volume;
- (bb) 50% of pipe length;
- (cc) All pressure zones;
- (dd) All 12-inch diameter and larger pipes;
- (ee) All 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water;

(ff) All 6-inch and larger pipes that connect remote areas of a distribution system to the main portion of the system;

(gg) All storage facilities with standard operations represented in the model; and

(hh) All active pump stations with controls represented in the model; and

(ii) All active control valves.

(III) The model must be calibrated, or have calibration plans, for the current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. All required calibration must be completed no later than 12 months after plan submission.

(B) Reporting modeling. The system specific study plan must include the information in this paragraph (a)(ii)(B).

(I) Tabular or spreadsheet data demonstrating that the model meets requirements in paragraph (a)(ii)(A)(II) of this section.

(II) A description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (i.e., from time zero until the time it takes to for the model to reach a consistently repeating pattern of residence time).

(III) Model output showing preliminary 24 hour average residence time predictions throughout the distribution system.

(IV) Timing and number of samples representative of the distribution system planned for at least one monitoring period of TTHM and HAA5 dual sample monitoring at a number of locations no less than would be required for the system under standard monitoring in R309-210-9(2) during the historical month of high TTHM. These samples must be taken at locations other than existing R309-210-8 compliance monitoring locations.

(V) Description of how all requirements will be completed no later than 12 months after the water system submits the system specific study plan.

(VI) Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is

complete) and all R309-210-8 compliance monitoring.

(VII) Population served and system type (surface water or ground water).

(VIII) The water system must retain a complete copy of the system specific study plan submitted under this paragraph (a)(ii), including any Executive Secretary modification of the system specific study plan, for as long as the water system is required to retain the IDSE report under paragraph (b)(vii) of this section.

(C) If the water system submits a model that does not fully meet the requirements under paragraph (a)(ii) of this section, the water system must correct the deficiencies and respond to Executive Secretary inquiries concerning the model. If the water system fails to correct deficiencies or respond to inquiries to the Executive Secretary's satisfaction, the water system must conduct standard monitoring under R309-210-9(2).

(b) IDSE report. The IDSE report must include the elements required in paragraphs (b)(i) through (b)(vi) of this section. The water system must submit the IDSE report according to the schedule in R309-210-9(1)(c).

(i) The IDSE report must include all TTHM and HAA5 analytical results from R309-210-8 compliance monitoring and all system specific study monitoring conducted during the period of the system specific study presented in a tabular or spreadsheet format acceptable to the Executive Secretary. If changed from the system specific study plan submitted under paragraph (a) of this section, the IDSE report must also include a schematic of the distribution system, the population served, and system type (surface water or ground water).

(ii) If the water system used the modeling provision under paragraph (a)(ii) of this section, the water system must include final information for the elements described in paragraph (a)(ii)(B) of this section, and a 24-hour time series graph of residence time for each R309-210-10 compliance monitoring location selected.

(iii) The water system must recommend and justify R309-210-10 compliance monitoring locations and timing based on the protocol in R309-210-9(6).

(iv) The IDSE report must include an explanation of any deviations from the approved system specific study plan.

(v) The IDSE report must include the basis (analytical and modeling results) and justification the water system used to select the recommended R309-210-10 monitoring locations.

(vi) The water system may submit the IDSE report in lieu of the system specific study plan on the schedule identified in R309-210-9(1)(c) for submission of the system specific study plan if the water system believes that it has the necessary information by the time that the system specific study plan is due. If the water system elects this approach, the IDSE report must also include all information required under paragraph (a) of this section.

(vii) The water system must retain a complete copy of the IDSE report submitted under this section for 10 years after the date the water system submitted the IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements the water system recommended in the IDSE report or if the Executive Secretary approves alternative monitoring locations, the water system must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. The water system must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(4) 40/30 certification.

(a) Eligibility. The water system is eligible for 40/30 certification if it had no TTHM or HAA5 monitoring violations under R309-210-8 of this part and no individual sample exceeded 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 during an eight consecutive calendar quarter period beginning no earlier than the date specified in this paragraph (a).

(i) If the 40/30 certification is due October 1, 2006 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2004.

(ii) If the 40/30 certification is due April 1, 2007 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2004.

(iii) If the 40/30 certification is due October 1, 2007 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2005.

(iv) If the 40/30 certification is due April 1, 2008 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2005.

(v) Unless the water system is on reduced monitoring under R309-210-8 of this part and were not required to monitor during the specified period. If the water system did not monitor during the specified period, the water system must base its eligibility on compliance samples taken during the 12 months preceding the specified period.

(b) 40/30 certification.

(i) The water system must certify to the Executive Secretary that every individual compliance sample taken under R309-210-8 of this part during the periods specified in paragraph (a) of this section were less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5, and that the water system did not have any TTHM or HAA5 monitoring violations during the period specified in paragraph (a) of this section.

(ii) The Executive Secretary may require the water system to submit compliance monitoring results, distribution system schematics, and/or recommended R309-210-10 compliance monitoring locations in addition to the certification. If the water system fails to submit the requested information, the Executive Secretary may require standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(iii) The Executive Secretary may still require standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3) even if the water system meets the criteria in paragraph (a) of this section.

(iv) A water system must retain a complete copy of its certification submitted under this section for 10 years after the date that the water system submitted the certification. The water system must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(5) Very small system waivers.

(a) If the water system serves fewer than 500 people and it has taken TTHM and HAA5 samples under R309-210-8, the water system is not required to comply with this subpart unless the Executive Secretary notifies the water system that it must conduct standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(b) If the water system has not taken TTHM and HAA5 samples under R309-210-8 or if the Executive Secretary notifies the water system that the water system must comply with this subpart, the water system must conduct standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(6) Stage 2 (R309-210-10) compliance monitoring location recommendations.

(a) The IDSE report must include the recommendations and justification for where and during what month(s) TTHM and HAA5 monitoring for R309-210-10 of this part should be conducted. The water system must base the recommendations on the criteria in paragraphs (b) through (e) of this section.

(b) The water system must select the number of monitoring locations specified in this paragraph (b). The water system will use these recommended locations as R309-210-10 routine compliance monitoring locations, unless Executive Secretary requires different or additional locations. The water system should distribute locations throughout the distribution system to the extent possible.

(i) Surface water systems serving less than 500.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(ii) Surface water systems serving between 500 to 3,300.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(iii) Surface water systems serving between 3,301 to 9,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(iv) Surface water systems serving between 10,000 to 49,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(B) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

(v) Surface water systems serving between 50,000 to 249,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(B) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Two dual samples sets must be taken at an existing R309-210-8 compliance location.

(vi) Surface water systems serving between 250,000 to 999,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. 12 dual samples sets must be collected per monitoring period.

(B) Five dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Three dual sample sets must be taken at an existing R309-210-8 compliance location.

(vii) Surface water systems serving between 1,000,000 to 4,999,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. 16 dual samples sets must be collected per monitoring period.

(B) Six dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Six dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Four dual sample sets must be taken at an existing R309-210-8 compliance location.

(viii) Surface water systems serving 5,000,000 or more population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. 20 dual samples sets must be collected per monitoring period.

(B) Eight dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Seven dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Five dual sample sets must be taken at an existing R309-210-8 compliance location.

(ix) Ground water systems serving less than 500.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(x) Ground water systems serving between 500 to 9,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(xi) Ground water systems serving between 10,000 to 99,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(B) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

(xii) Ground water systems serving between 100,000 to 499,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Six dual samples sets must be collected per monitoring period.

(B) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

(xiii) Ground water systems serving 500,000 or greater population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(B) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Two dual sample sets must be taken at an existing R309-210-8 compliance location.

(xiv) All systems must monitor during month of highest DBP concentrations.

(xv) Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except



for subpart H systems serving 500-3,300. Systems on annual monitoring and subpart H systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location, and month, if monitored annually).

(c) The water system must recommend R309-210-10 compliance monitoring locations based on standard monitoring results, system specific study results, and R309-210-8 compliance monitoring results. The water system must follow the protocol in paragraphs (c)(i) through (c)(viii) of this section. If required to monitor at more than eight locations, the water system must repeat the protocol as necessary. If the water system do not have existing R309-210-8 compliance monitoring results or if the water system do not have enough existing R309-210-8 compliance monitoring results, the water system must repeat the protocol, skipping the provisions of paragraphs (c)(iii) and (c)(vii) of this section as necessary, until the water system have identified the required total number of monitoring locations.

(i) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(ii) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(iii) Existing R309-210-8 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(iv) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(v) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(vi) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(vii) Existing R309-210-8 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(viii) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(d) The water system may recommend locations other than those specified in paragraph (c) of this section if the water system include a rationale for selecting other locations. If the Executive Secretary approves the alternate locations, the water system must monitor at these locations to determine compliance under R309-210-10 of this part.

(e) The recommended schedule must include R309-210-10 monitoring during the peak historical month for TTHM and HAA5 concentration, unless the Executive Secretary approves another month. Once the water system have identified the peak historical month, and if the water system is required to conduct routine monitoring at least quarterly, the water system must schedule R309-210-10 compliance monitoring at a regular frequency of every 90 days or fewer.

### **R309-210-10. Disinfection Byproducts - Stage 2 Requirements.**

(1) General requirements.

(a) General. The regulations in this sub-section establish monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain consecutive systems.

(b) Applicability. The water system is subject to these requirements if the system is a community water system or a non-transient non-community water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) Schedule. The water system must comply with the requirements in this subpart on the schedule in the following sub-paragraphs (c)(i) through (vi) based on the system type.

(i) For water systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(A) For water systems that serve a population greater than or equal to 100,000 the water system must comply with R309-210-10 monitoring by April 1, 2012.

(B) For water systems that serve a population from 50,000 to 99,999 the water system must comply with R309-210-10 monitoring by October 1, 2012.

(C) For water systems that serve a population from 10,000 to 49,999 the water system must comply with R309-210-10 monitoring by October 1, 2013.

(D) For water systems that serve a population less than 10,000 the water system must comply with R309-210-10 monitoring by October 1, 2013 if no Cryptosporidium monitoring is required under R309-215-15(2)(a)(iv) or October 1, 2014 if Cryptosporidium monitoring is required under R309-215-15(a)(iv) or (a)(vi).

(ii) For other water systems that are part of a combined distribution system:

(A) For wholesale systems or consecutive systems the water system must comply with R309-210-10 monitoring at the same time as the system with the earliest compliance date in the combined distribution system.

(iii) The Executive Secretary may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if the water system requires capital improvements to comply with an MCL.

(iv) The monitoring frequency is specified in R309-210-10(2)(a)(ii).

(A) If the water system is required to conduct quarterly monitoring, the water system must begin monitoring in the first full calendar quarter that includes the compliance date in paragraph (c).

(B) If the water system is required to conduct monitoring at a frequency that is less than quarterly, the water system must begin monitoring in the calendar month recommended in the IDSE report prepared under R309-210-9(2) or R309-210-9(3) or the calendar month identified in the R309-210-10 monitoring plan developed under R309-210-10(3) no later than 12 months after the compliance date in R309-210-10(1)(c).

(v) If the water system is required to conduct quarterly monitoring, the water system must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). If the water system is required to conduct monitoring at a frequency that is less than quarterly, the water system must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(vi) For the purpose of the schedule in this paragraph (c), the Executive Secretary may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Executive Secretary may also determine that the combined distribution system does not include certain wholesale systems

based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) Monitoring and compliance.

(i) Systems required to monitor quarterly. To comply with R309-210-10 MCLs in R309-200-5(3)(c)(3)(vi), the water system must calculate LRAAs for TTHM and HAA5 using monitoring results collected under this sub-section and determine that each LRAA does not exceed the MCL. If the water system fails to complete four consecutive quarters of monitoring, the water system must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If the water system takes more than one sample per quarter at a monitoring location, the water system must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(ii) Systems required to monitor yearly or less frequently. To determine compliance with R309-210-10 MCLs in R309-200-5(3)(c)(3)(vi), the water system must determine that each sample taken is less than the MCL. If any sample exceeds the MCL, the water system must comply with the requirements of R309-210-10(6). If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(e) Violation. The water system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the water system fail to monitor.

(2) Routine monitoring.

(a) Monitoring.

(i) If the water system submitted an IDSE report, the water system must begin monitoring at the locations and months the water system have recommended in the IDSE report submitted under R309-210-9(6) following the schedule in R309-210-10(1)(c), unless the Executive Secretary requires other locations or additional locations after its review. If the water system submitted a 40/30 certification under R309-210-9(4) or the water system qualified for a very small system waiver under R309-210-9(5) or the water system is a non-transient non-community water system serving less than 10,000, the water system must monitor at the location(s) and dates identified in the monitoring plan in R309-210-8(5), updated as required by R309-210-10(3).

(ii) The water system must monitor at no fewer than the number of locations identified in this paragraph (a)(ii).

(A) Surface water systems serving less than 500 shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(B) Surface water systems serving between 500 to 3,300 shall have four monitoring periods per year and shall collect two dual samples sets per monitoring period.

(C) Surface water systems serving between 3,301 to 9,999 population shall have four monitoring periods per year and shall collect two dual samples sets per monitoring period.

(D) Surface water systems serving between 10,000 to 49,999 population shall have four monitoring periods per year and shall collect four dual samples sets per monitoring period.

(E) Surface water systems serving between 50,000 to 249,999 population shall have four monitoring periods per year and shall collect eight dual samples sets per monitoring period.

(F) Surface water systems serving between 250,000 to 999,999 population shall have four monitoring periods per year and shall collect 12 dual samples per monitoring period.

(G) Surface water systems serving between 1,000,000 to 4,999,999 population shall have four monitoring periods per year and shall collect 16 dual samples sets per monitoring period.

(H) Surface water systems serving 5,000,000 or more

population shall have four monitoring periods per year and shall collect 20 dual samples sets per monitoring period.

(I) Ground water systems serving less than 500 shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(J) Ground water systems serving between 500 to 9,999 population shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(K) Ground water systems serving between 10,000 to 99,999 population shall have four monitoring periods per year and shall collect four dual samples sets per monitoring period.

(L) Ground water systems serving between 100,000 to 499,999 population shall have four monitoring periods per year and shall collect six dual samples sets per monitoring period.

(M) Ground water systems serving 500,000 or greater population shall have four monitoring periods per year and shall collect eight dual samples sets per monitoring period.

(N) All systems must monitor during month of highest DBP concentrations.

(O) Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for surface water systems serving 500-3,300. Systems on annual monitoring and surface water systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

(iii) If the water system is an uninfected system that begins using a disinfectant other than UV light after the dates in R309-210-9 for complying with the Initial Distribution System Evaluation requirements, the water system must consult with the Executive Secretary to identify compliance monitoring locations for this sub-section. The water system must then develop a monitoring plan under R309-210-10(3) that includes those monitoring locations.

(b) Analytical methods. The water system must use an approved method listed in R309-200-4(3) for TTHM and HAA5 analyses in this sub-section. Analyses must be conducted by laboratories that have received certification by EPA or the Executive Secretary as specified in R309-200-4(3).

(3) Stage 2 monitoring plan.

(a)(i) The water system must develop and implement a monitoring plan to be kept on file for Executive Secretary and public review. The monitoring plan must contain the elements in paragraphs (a)(i)(A) through (a)(i)(D) of this section and be complete no later than the date the water system conduct the initial monitoring under this sub-section.

(A) Monitoring locations;

(B) Monitoring dates;

(C) Compliance calculation procedures; and

(D) Monitoring plans for any other systems in the combined distribution system if the Executive Secretary has reduced monitoring requirements under the Executive Secretary authority in R309-105-5(2).

(ii) If the water system were not required to submit an IDSE report under either R309-210-9(2) or R309-210-9(3), and the water system do not have sufficient R309-210-8 monitoring locations to identify the required number of R309-210-10 compliance monitoring locations indicated in R309-210-9(6)(b), the water system must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The water system must also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If the water system have more R309-210-8 monitoring locations than required for R309-210-10 compliance monitoring in R309-210-

9(6)(b), the water system must identify which locations the water system will use for R309-210-10 compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of R309-210-10 compliance monitoring locations have been identified.

(b) If the water system is a surface water system serving greater than 3,300 people, the water system must submit a copy of the monitoring plan to the Executive Secretary prior to the date the water system conduct the initial monitoring under this sub-section, unless the IDSE report submitted under R309-210-9 contains all the information required by this section.

(c) The water system may revise the monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for Executive Secretary-approved reasons, after consultation with the Executive Secretary regarding the need for changes and the appropriateness of changes. If the water system changes monitoring locations, the water system must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The Executive Secretary may also require modifications in the monitoring plan. If the water system is a surface water system serving greater than 3,300 people, the water system must submit a copy of the modified monitoring plan to the Executive Secretary prior to the date the water system is required to comply with the revised monitoring plan.

(4) Reduced monitoring.

(a) The water system may reduce monitoring to the level specified in this paragraph (a) any time the LRAA is equal to or less than 0.040 mg/L for TTHM and equal to or less than 0.030 mg/L for HAA5 at all monitoring locations. The water system may only use data collected under the provisions of this subsection or R309-210-8 to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either R309-210-8(2)(a)(iii) or R309-215-12.

(i) Surface water systems serving a population less than 500. Monitoring reduction

(A) Monitoring may not be reduced.

(ii) Surface water systems serving between 500 to 3,300 population.

(A) One monitoring periods per year. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(iii) Surface water systems serving between 3,301 to 9,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One dual sample set at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(iv) Surface water systems serving between 10,000 to 49,999 population.

(A) Four monitoring periods per year. Two dual samples

sets must be collected per monitoring period.

(B) One dual sample set must be taken at the location of the highest TTHM LRAAs.

(C) One dual sample set must be taken at the location of the highest HAA5 LRAAs.

(v) Surface water systems serving between 50,000 to 249,999 population.

(A) Four monitoring periods per year. Four dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the two highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the two highest HAA5 LRAAs.

(vi) Surface water systems serving between 250,000 to 999,999 population.

(A) Four monitoring periods per year. Six dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the three highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the three highest HAA5 LRAAs.

(vii) Surface water systems serving between 1,000,000 to 4,999,999 population.

(A) Four monitoring periods per year. Eight dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the four highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the four highest HAA5 LRAAs.

(viii) Surface water systems serving 5,000,000 or more population.

(A) Four monitoring periods per year. 10 dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the five highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the five highest HAA5 LRAAs.

(ix) Ground water systems serving less than 500.

(A) One monitoring period every three years. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(x) Ground water systems serving between 500 to 9,999 population.

(A) One monitoring period per year. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(xi) Ground water systems serving between 10,000 to 99,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One dual sample set at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(xii) Ground water systems serving between 100,000 to 499,999 population.

(A) Four monitoring periods per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the location of the highest TTHM LRAAs.

(C) One dual sample set must be taken at the location of the highest HAA5 LRAAs.

(xiii) Ground water systems serving 500,000 or greater population.

(A) Four monitoring periods per year. Four dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the two highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the two highest HAA5 LRAAs.

(xiv) Systems on quarterly monitoring must take dual sample sets every 90 days.

(b) The water system may remain on reduced monitoring as long as the TTHM LRAA less than or equal to 0.040 mg/L and the HAA5 LRAA less than or equal to 0.030 mg/L at each monitoring location (for systems with quarterly reduced monitoring) or each TTHM sample less than or equal to 0.060 mg/L and each HAA5 sample less than or equal to 0.045 mg/L (for systems with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either R309-210-8(2)(a)(iii) or R309-215-12.

(c) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, is greater than 4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, the water system must resume routine monitoring under R309-210-10(2) or begin increased monitoring if R309-210-10(6) applies.

(d) The Executive Secretary may return the system to routine monitoring at the Executive Secretary's discretion.

(5) Additional requirements for consecutive systems.

If the water system is a consecutive system that does not add a disinfectant but delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light, the water system must comply with analytical and monitoring requirements for chlorine and chloramines in R309-200-4(3) and the compliance requirements in R309-210-8(6)(c)(i) beginning April 1, 2009, unless required earlier by the Executive Secretary, and report monitoring results under R309-105-16(2)(c).

(6) Conditions requiring increased monitoring.

(a) If the water system is required to monitor at a particular location annually or less frequently than annually under R309-210-10(2) or R309-210-10(4), the water system must increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if a TTHM sample is greater than 0.080 mg/L or a HAA5 sample is greater than 0.06 mg/L at any location.

(b) The water system is in violation of the MCL when the LRAA exceeds the R309-210-10 MCLs in R309-200-5(3)(c)(vi), calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). The water system is

in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the water system fail to monitor.

(c) The water system may return to routine monitoring once the water system have conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(7) Operational evaluation levels.

(a) The water system have exceeded the operational evaluation level at any monitoring location where the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine an average, exceeds 0.080 mg/L, or where the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine an average, exceeds 0.060 mg/L.

(b)(i) If the water system exceeds the operational evaluation level, the water system must conduct an operational evaluation and submit a written report of the evaluation to the Executive Secretary no later than 90 days after being notified of the analytical result that causes the water system to exceed the operational evaluation level. The written report must be made available to the public upon request.

(ii) The operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedences.

(A) The water system may request and the Executive Secretary may allow the water system to limit the scope of the evaluation if the water system is able to identify the cause of the operational evaluation level exceedance.

(B) The request to limit the scope of the evaluation does not extend the schedule in paragraph (b)(i) of this section for submitting the written report. The Executive Secretary must approve this limited scope of evaluation in writing and the water system must keep that approval with the completed report.

(8) Requirements for remaining on reduced TTHM and HAA5 monitoring based on R309-210-8 results.

The water system may remain on reduced monitoring after the dates identified in R309-210-10(1)(c) for compliance with this sub-section only if the water system qualifies for a 40/30 certification under R309-210-9(4) or have received a very small system waiver under R309-210-9(5), plus the water system meets the reduced monitoring criteria in R309-210-10(4)(a), and the water system does not change or add monitoring locations from those used for compliance monitoring under R309-210-8. If the monitoring locations under this sub-section differ from the monitoring locations under R309-210-8, the water system may not remain on reduced monitoring after the dates identified in R309-210-10(1)(c) for compliance with this sub-section.

(9) Requirements for remaining on increased TTHM and HAA5 monitoring based on R309-210-8 results.

If the water system was on increased monitoring under R309-210-8(2)(a), the water system must remain on increased monitoring until the water system qualifies for a return to routine monitoring under R309-210-10(6)(c). The water system must conduct increased monitoring under R309-210-10(6) at the monitoring locations in the monitoring plan developed under R309-210-10(3) beginning at the date identified in R309-210-10(1)(c) for compliance with this sub-section and remain on increased monitoring until the water system qualifies for a return to routine monitoring under R309-210-10(6)(c).

(10) Reporting and recordkeeping requirements.

(a) Reporting.

(i) The water system must report the following

information for each monitoring location to the Executive Secretary within 10 days of the end of any quarter in which monitoring is required:

- (A) Number of samples taken during the last quarter.
- (B) Date and results of each sample taken during the last quarter.
- (C) Arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the water system must report this information to the Executive Secretary as part of the first report due following the compliance date or anytime thereafter that this determination is made. If the water system is required to conduct monitoring at a frequency that is less than quarterly, the water system must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless the water system is required to conduct increased monitoring under R309-210-10(6).
- (D) Whether, based on R309-200-5(3)(c)(vi) and this subsection, the MCL was violated at any monitoring location.
- (E) Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.
  - (ii) If the system is a surface water system seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, the water system must report the following source water TOC information for each treatment plant that treats surface water or ground water under the direct influence of surface water to the Executive Secretary within 10 days of the end of any quarter in which monitoring is required:
    - (A) The number of source water TOC samples taken each month during last quarter.
    - (B) The date and result of each sample taken during last quarter.
    - (C) The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample.
    - (D) The running annual average (RAA) of quarterly averages from the past four quarters.
    - (E) Whether the RAA exceeded 4.0 mg/L.
  - (iii) The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information.
    - (b) Recordkeeping. The water system must retain any R309-210-10 monitoring plans and the R309-210-10 monitoring results as required by R309-105-17.

**KEY: drinking water, distribution system monitoring, compliance determinations**  
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**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.

R309-215-3 Definitions.

R309-215-4 General.

R309-215-5 Monitoring Requirements for Groundwater Disinfection.

R309-215-6 Monitoring Requirements for Miscellaneous Treatment Plants.

R309-215-7 Surface Water Treatment Plant Evaluations.

R309-215-8 Surface Water Treatment Plant Monitoring and Reporting.

R309-215-9 Turbidity Monitoring and Reporting.

R309-215-10 Residual Disinfectant Monitoring.

R309-215-11 Waterborne Disease Outbreak.

R309-215-12 Monitoring Requirements for Disinfection Byproducts Precursors (DBPP).

R309-215-13 Treatment Techniques for control of Disinfection Byproducts Precursors (DBPP).

R309-215-14 Disinfection Profiling and Benchmarking.

R309-215-15 Enhanced Treatment for Cryptosporidium (Federal Subpart W).

R309-215-16 Groundwater Rule.

**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 63G-3 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 but may be further clarified herein.

**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 shall 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.

**R309-215-5. 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 information to the Division as specified in R309-105-16(2)(c).

(3) A water system shall report a malfunction of any facility or equipment such that a detectable residual cannot be maintained throughout the distribution system. The system shall notify the Division as soon as possible, but no later than by the end of the next business day. The system also shall 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.

**R309-215-6. Monitoring Requirements for Miscellaneous Treatment Plants.**

(1) Treatment of the drinking water may be required for other than inactivation of microbial contaminants or removal/inactivation of pathogens and viruses. Miscellaneous treatment methods are outlined in R309-535.

(2) The Executive Secretary may require additional monitoring as necessary to evaluate the treatment process and to ensure the quality of the water. The specific analytes, frequency of monitoring, the reporting frequency and the sampling location for which monitoring may be required shall be determined by the following:

(a) the contaminant of concern for which the treatment process has been installed;

(b) the process control samples required to operate treatment process being used; and

(c) alternative surrogate sampling when it is either quicker or less expensive and still provides the necessary information;

(3) For point-of-use or point-of-entry technology the location of sampling may be at each treatment unit spread out over time.

(4) If monitoring is required, the Executive Secretary shall provide the report forms and the water system shall report the data as required by R309-105-16(3). Alternate forms may be used as long as prior approval from the Executive Secretary is obtained.

**R309-215-7. Surface Water Treatment Evaluations.**

(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 and report the results to the Division as indicated in R309-215-7 through R309-215-14. Individual plants will be evaluated in accordance with the criteria outlined in paragraph (2) below. 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 shall maintain to assure compliance with R309-200-5(7)(a)(i).

(2) Criteria for Individual Treatment Plant Evaluation: New and existing water treatment plants shall 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).

(3) 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 respectively. 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.

If a plant decides to recycle any spent filter backwash water, thickener supernatant, or liquids from dewatering processes the Division shall be notified in writing by December 8, 2003 or prior to recycling such waters. Such notification shall include, at a minimum:

(a) A plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and any liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant.

(b) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and Division approved operating capacity for the plant where the Division has made such determinations.

(c) Treatment technique (TT) requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system as defined in R309-525 or R309-530 or at an alternate location approved by the Division by or after June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

(4) 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.

(5) The nominal credit that will be assigned certain conventional processes are outlined in Table 215-1:

TABLE 215-1  
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

(6) 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.

**R309-215-8. Surface Water Treatment Plant Monitoring and 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:

(1) For each day;

(a) if the plant treats water from multiple sources, the sources being utilized (including recycled backwash water) and the ratio for each if blending occurs.

(b) the total volume of water treated by the plant,

(c) the turbidity of the raw water entering the plant,

(d) the pH of the effluent water, measured at or near the monitoring point for disinfectant residual,

(e) the temperature of the effluent water, measured at or near the monitoring point for disinfectant residual,

(f) 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),

(g) 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

(h) the results of any "jar tests" conducted that day

(2) For each filter, each day;

(a) the rate of water applied to each (gpm/sq.ft.),

(b) the head loss across each (feet of water or psi),

(c) length of backwash (if conducted; in minutes), and

(d) hours of operation since last backwashed.

(3) 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:

(a) Acrylamide: 0.05%, when dosed at 1 part per million, and

(b) Epichlorohydrin: 0.01%, when dosed at 20 parts per million.

Certification may rely on manufacturers data.

(4) Additional record-keeping for plants that recycle.

The system must collect and retain on file recycle flow information for review and evaluation by the Division beginning June 8, 2004 or upon approval for recycling. As a minimum the following shall be maintained:

- (a) Copy of the recycle notification and information submitted to the Division under R309-215-7(3).
- (b) List of all recycle flows and the frequency with which they are returned.
- (c) Average and maximum backwash flow rates through the filters and the average and maximum duration of the filter backwash process in minutes.
- (d) Typical filter run length and a written summary of how filter run length is determined.
- (e) The type of treatment provided for the recycle flow.
- (f) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used, average dose, frequency of use and frequency at which solids are removed, if applicable.

### **R309-215-9. Turbidity Monitoring and Reporting.**

Public water systems utilizing surface water and ground water under the direct influence of surface water shall monitor for turbidity in accordance with this section. Small surface water systems serving a population less than 10,000 shall monitor in accordance with subsections (1), (2), (3), (5) and (6). Large surface water systems serving 10,000 or more population shall monitor in accordance with subsections (1), (2), (3), (4) and (6).

(1) Routine Monitoring Requirements for Treatment Facilities utilizing surface water sources or ground water sources under the direct influence of surface water.

(a) 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 R309-525-15(4)(c)(vii). Where the plant facility does not have an internal clearwell, the turbidity shall 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 shall then be monitored at a location immediately downstream of the treatment plant filters.

(b) All treatment plants, with the exception of those utilizing slow sand filtration and other conditions indicated in section (c) 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 (d) below. These plants shall continuously record the finished water turbidity of the combined filter effluent as well as each individual filter. All systems shall be equipped to continuously monitor the turbidity at each filter unless the treatment plant is only equipped with two filters and the turbidity is measured at the combined filter effluent (CFE). If there is a failure in continuous monitoring equipment the system shall conduct grab sampling every 4 hours in lieu of continuous monitoring, but for no more than five working days following the failure of equipment. Systems serving less than 10,000 population shall have no more than 14 days to conduct grab samples in lieu of continuous monitoring in order to correct any failing equipment. All surface water systems shall monitor the turbidity results of individual filters at a frequency no greater than every 15 minutes.

(c) Turbidity measurements, as outlined below, shall 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 shall be reported and the required percentage achieved for compliance:

(i) The total number of interpreted filtered water turbidity measurements taken during the month;

(ii) 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 shall be 95 percent or greater for compliance; and

(iii) The date and value of any turbidity measurements taken during the month which exceed 5 NTU. The system shall 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.

(d) The analytical method which shall 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 shall 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. For systems that practice lime softening, the representative combined filter effluent turbidity sample may be acidified prior to analysis with prior approval by the Executive Secretary as to the protocol.

(2) Procedures if a Filtered Water Turbidity Limit is Exceeded

(a) 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.

(b) 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.

(c) Initial Notification of the Executive Secretary -

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.

(3) 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 R309-215-7(2).

(4) Additional reporting and recordkeeping requirements for large surface water systems (serving greater than 10,000 population) reporting and recordkeeping requirements.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a large surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(ii) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system shall report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(iii) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment shall consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(iv) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall arrange for and conduct a comprehensive performance evaluation by the Division or a third party approved by the Executive Secretary no later than 30 days following the exceedance and have the evaluation completed and submitted to the Division no later than 90 days following the exceedance.

(5) Additional reporting and recordkeeping requirements for surface water systems serving less than 10,000 population.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter (or CFE for systems with 2

filters that monitor CFE in lieu of individual filters) that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number(s), the corresponding date(s), the turbidity values which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s), to the Executive Secretary by the 10th of the following month.

(ii) If a system was required to report to the Executive Secretary for three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall conduct a self-assessment of the filter within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (iii) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.

(iii) If a system was required to report to the Executive Secretary for two months in a row and turbidity exceeded 2.0 NTU in two consecutive measurements taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall arrange to have a comprehensive performance evaluation (CPE) conducted by the Division or a third party approved by the Executive Secretary no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE is required, the system must report a CPE required and the date it was triggered. If a CPE has been completed by the Division or a third party approved by the Executive Secretary within the 12 prior months or the system and Division are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the Division no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

(6) Additional reporting requirements.

(a) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

(b) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9 for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

### R309-215-10. 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:

(1) 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 215.2 below:

TABLE 215-2  
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.

(2) 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 shall notify the Division as soon as possible, but no later than by the end of the next business day. The system also shall 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.

(3) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to R309-210-5:

(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;

(f) for the current and previous month the system serves water to the public, the value of "V" in the formula,  $V = ((c+d+e)/(a+b)) \times 100$ , where a = the value in sub-section (a) above, b = the value in sub-section (b) above, c = the value in sub-section (c) above, d = the value in sub-section (d) above, and e = the value in sub-section (e) above.

### R309-215-11. 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, shall report that occurrence to the Division as soon as possible, but no later than by the end of the next business day.

### R309-215-12. Monitoring Requirements for Disinfection Byproducts Precursors (DBPP).

(1) Routine monitoring. Surface water systems which use conventional filtration treatment (as defined in R309-110) shall monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under this paragraph (1) shall also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems shall monitor for alkalinity in the source water prior to any treatment. Systems shall take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Reduced monitoring. Surface water systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may

reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to 2.0 mg/L.

(3) Compliance shall be determined as specified by R309-215-13(3). Systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in R309-215-13(2)(b) and shall therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to R309-215-13(2)(c) and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under R309-215-13(3)(a)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

**R309-215-13. Treatment Technique for Control of Disinfection Byproduct Precursors (DBPP).**

(1) Applicability.

(a) Surface water systems using conventional filtration treatment (as defined in R309-110) shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in paragraph (2) of this section unless the system meets at least one of the alternative compliance criteria listed in paragraph (1)(b) or (1)(c) of this section.

(b) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Surface Water Systems using conventional filtration treatment may use the alternative compliance criteria in paragraphs (1)(b)(i) through (vi) of this section to comply with this section in lieu of complying with paragraph (2) of this section. Systems shall still comply with monitoring requirements in R309-215-12.

(i) The system's source water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, calculated quarterly as a running annual average

(iii) The system's source water TOC level, measured according to R309-200-4(3), is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to R309-200-4(3), is greater than 60 mg/L (as CaCO<sub>3</sub>), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in R309-210-8(1)(a), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in R309-210-8(1)(a) to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Executive Secretary for approval not later than the effective date for compliance in R309-210-8(1)(a). These technologies shall be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation

of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(c) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (2)(b) of this section may use the alternative compliance criteria in paragraphs (1)(c)(i) and (ii) of this section in lieu of complying with paragraph (2) of this section. Systems shall still comply with monitoring requirements in R309-210-8(4).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as CaCO<sub>3</sub>), measured monthly according to R309-200-4(3) and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as CaCO<sub>3</sub>), measured monthly according to R309-200-4(3) and calculated quarterly as an annual running average.

(2) Enhanced coagulation and enhanced softening performance requirements.

(a) Systems shall achieve the percent reduction of TOC specified in paragraph (2)(b) of this section between the source water and the combined filter effluent, unless the Executive Secretary approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (2)(c) of this section.

(b) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with R309-200-4(3). Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC:

TABLE 215-3  
Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Surface Water Systems Using Conventional Treatment (notes 1,2)

Source-Water TOC, mg/L	Source-Water Alkalinity, mg/L as CaCO <sub>3</sub>		
	0-60 (percent)	>60-120 (percent)	>120 (Note 3) (percent)
>2.0-4.0	35.0%	25.0%	15.0%
>4.0-8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

Note 1: Systems meeting at least one of the conditions in paragraph (1)(b)(i)-(vi) of this section are not required to operate with enhanced coagulation.

Note 2: Softening systems meeting one of the alternative compliance criteria in paragraph (1)(c) of this section are not required to operate with enhanced softening.

Note 3: Systems practicing softening shall meet the TOC removal requirements in this column.

(c) Surface water systems using conventional treatment systems that cannot achieve the Step 1 TOC removals required by paragraph (2)(b) of this section due to water quality parameters or operational constraints shall apply to the Executive Secretary, within three months of failure to achieve the TOC removals required by paragraph (2)(b) of this section, for approval of alternative minimum TOC removal (Step 2) requirements submitted by the system. If the Executive Secretary approves the alternative minimum TOC removal (Step

2) requirements, the Executive Secretary may make those requirements retroactive for the purposes of determining compliance. Until the Executive Secretary approves the alternate minimum TOC removal (Step 2) requirements, the system shall meet the Step 1 TOC removals contained in paragraph (2)(b) of this section.

(d) Alternate minimum TOC removal (Step 2) requirements. Applications made to the Executive Secretary by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under paragraph (2)(c) of this section shall include, at a minimum, results of bench- or pilot-scale testing conducted under paragraph (2)(d)(i) of this section. The submitted bench- or pilot- scale testing shall be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation level is defined as: Coagulation at a coagulant dose and pH as determined by the method described in paragraphs (2)(d)(i) through (v) of this section such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the Executive Secretary, this minimum requirement supersedes the minimum TOC removal required by the table in paragraph (2)(b) of this section. This requirement will be effective until such time as the Executive Secretary approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve Executive Secretary set alternative minimum TOC removal levels is a violation of R309-215-13.

(ii) Bench- or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table 215-4:

ALKALINITY (mg/L as CaCO <sub>3</sub> )	TARGET pH
0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary (consistent with other NPDWRs) to achieve the minimum TOC percent removal approved under paragraph (2)(c) of this section.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the Executive Secretary for a waiver of enhanced coagulation requirements.

### (3) Compliance Calculations.

(a) Surface Water Systems other than those identified in paragraphs (1)(b) or (1)(c) of this section shall comply with requirements contained in paragraphs (2)(b) or (2)(c) of this section. Systems shall calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal

to:  $(1 - (\text{treated water TOC}/\text{source water TOC})) \times 100$ .

(ii) Determine the required monthly TOC percent removal (from either the table in paragraph (2)(b) of this section or from paragraph (2)(c) of this section).

(iii) Divide the value in paragraph (3)(a)(i) of this section by the value in paragraph (3)(a)(ii) of this section.

(iv) Add together the results of paragraph (3)(a)(iii) of this section for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (3)(a)(iv) of this section is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(b) Systems may use the provisions in paragraphs (3)(b)(i) through (v) of this section in lieu of the calculations in paragraph (3)(a)(i) through (v) of this section to determine compliance with TOC percent removal requirements.

(i) In any month that the system's treated or source water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as CaCO<sub>3</sub>), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(iii) In any month that the system's source water SUVA, prior to any treatment and measured according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(iv) In any month that the system's finished water SUVA, measured according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as CaCO<sub>3</sub>), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(c) Surface Water Systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (1)(b) or (c) of this section.

(4) Treatment Technique Requirements for DBP Precursors. The Executive Secretary identifies the following as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems: For Surface Water Systems using conventional treatment, enhanced coagulation or enhanced softening.

### R309-215-14. Disinfection Profiling and Benchmarking.

A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. Community or non-transient non-community water systems which use surface water or ground water under the direct influence of surface must develop a disinfection profile unless the Executive Secretary determines that a system's profile is unnecessary. The Executive Secretary may approve the use of a more representative data set for disinfection profiling than the data set required under R309-215-14.

(1) Determination of systems required to profile. A public

water system subject to the requirements of this subpart shall determine its TTHM annual average using the procedure in paragraph (1)(a) of this section and its HAA5 annual average using the procedure in paragraph (1)(b) of this section. The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring.

(a) The TTHM annual average shall be the annual average during the same period as is used for the HAA5 annual average.

(i) Those systems that collected data under the provisions of 40 CFR 141.142 subpart M (Information Collection Rule) shall use the results of the samples collected during the last four quarters of required monitoring.

(ii) Those systems that use grandfathered HAA5 occurrence data that meet the provisions of paragraph (1)(b)(ii) of this section shall use TTHM data collected at the same time under the provisions of R309-200-5(3)(c)(vii) and R309-210-9.

(iii) Those systems that use HAA5 occurrence data that meet the provisions of paragraph (1)(b)(iii)(A) of this section shall use TTHM data collected at the same time under the provisions of R309-200-5(3)(c)(vii) and R309-210-9.

(b) The HAA5 annual average shall be the annual average during the same period as is used for the TTHM annual average.

(i) Those systems that collected data under the provisions of 40 CFR 141.142 subpart M (Information Collection Rule) shall use the results of the samples collected during the last four quarters of required monitoring.

(ii) Those systems that have collected four quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3) may use those data to determine whether the requirements of this section apply.

(iii) Those systems that have not collected four quarters of HAA5 occurrence data that meets the provisions of either paragraph (1)(b)(i) or (ii) of this section by March 16, 1999 shall either:

(A) Conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3) to determine the HAA5 annual average and whether the requirements of paragraph (2) of this section apply. This monitoring shall be completed so that the applicability determination can be made no later than March 31, 2000, or

(B) Comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with paragraph (2) of this section.

(c) The system may request that the Executive Secretary approve a more representative annual data set than the data set determined under paragraph (1)(a) or (b) of this section for the purpose of determining applicability of the requirements of this section.

(d) The Executive Secretary may require that a system use a more representative annual data set than the data set determined under paragraph (1)(a) or (b) of this section for the purpose of determining applicability of the requirements of this section.

(e) The system shall submit data to the Executive Secretary on the schedule in paragraphs (1)(e)(i) through (v) of this section.

(i) Those systems that collected TTHM and HAA5 data under the provisions of subpart M (Information Collection Rule), as required by paragraphs (1)(a)(i) and (1)(b)(i) of this section, shall submit the results of the samples collected during the last 12 months of required monitoring under 40 CFR section 141.142 (Information Collection Rule) not later than December 31, 1999.

(ii) Those systems that have collected four consecutive quarters of HAA5 occurrence data that meets the routine

monitoring sample number and location for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3), as allowed by paragraphs (1)(a)(ii) and (1)(b)(ii) of this section, shall submit those data to the Executive Secretary not later April 16, 1999. Until the Executive Secretary has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under paragraph (1)(b)(iii) of this section.

(iii) Those systems that conduct monitoring for HAA5 using the monitoring requirements specified by paragraphs (1)(a)(iii) and (1)(b)(iii)(A) of this section, shall submit TTHM and HAA5 data not later than April 1, 2000.

(iv) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under paragraphs (1)(b)(iii)(B) of this section, shall notify the Executive Secretary in writing of their election not later than December 31, 1999.

(v) If the system elects to request that the Executive Secretary approve a more representative annual data set than the data set determined under paragraph (1)(b)(i) of this section, the system shall submit this request in writing not later than December 31, 1999.

(f) Any system having either a TTHM annual average greater than or equal to 0.064 mg/L or an HAA5 annual average greater than or equal to 0.048 mg/L during the period identified in paragraphs (1)(a) and (b) of this section shall comply with paragraph (2) of this section.

(g) The Executive Secretary may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system. The Executive Secretary may approve a more representative TTHM and HAA5 data set to determine these levels.

(2) Disinfection profiling.

(a) Any system that is required by paragraph (1) of this section shall develop a disinfection profile of its disinfection practice for a period of up to three years. A disinfection profile consists of the following 3 steps:

(i) The system must collect data for several parameters from the plant over the course of 12 months. If your system serves between 500 and 9,999 persons you must begin to collect data no later than July 1, 2003. If your system serves fewer than 500 persons you must begin to collect data no later than January 1, 2004. If your system serves 10,000 persons or greater than the requirements of R309-215-14(2) are only required if it meets the criteria in paragraph R309-215-14(1)(f).

(ii) The system must use this data to calculate weekly log inactivation as discussed in paragraph (d) of this section.

(iii) The system must use these weekly log inactivations to develop a disinfection profile.

(b) The system shall monitor daily for a period of 12 consecutive calendar months to determine the total logs of inactivation for each day of operation, based on the CT99.9 values in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division), as appropriate, through the entire treatment plant. This system shall begin this monitoring not later than April 1, 2000. As a minimum, the system with a single point of disinfectant application prior to entrance to the distribution system shall conduct the monitoring in paragraphs (2)(b)(i) through (iv) of this section. A system with more than one point of disinfectant application shall conduct the monitoring in paragraphs (2)(b)(i) through (iv) of this section for each disinfection segment. The system shall monitor the parameters

necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3), as follows:

(i) The temperature of the disinfected water shall be measured once per day at each residual disinfectant concentration sampling point during peak hourly flow.

(ii) If the system uses chlorine, the pH of the disinfected water shall be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(iii) The disinfectant contact time(s) ("T") shall be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection shall be measured each day during peak hourly flow.

(v) For systems serving less than 10,000 persons, the above parameters shall be monitored once per week on the same calendar day, over 12 consecutive months for the purposes of disinfection profiling.

(c) In lieu of the monitoring conducted under the provisions of paragraph (2)(b) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (2)(c)(i) of this section. In addition to the monitoring conducted under the provisions of paragraph (2)(b) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (2)(c)(ii) of this section.

(i) A PWS that has three years of existing operational data may submit those data, a profile generated using those data, and a request that the Executive Secretary approve use of those data in lieu of monitoring under the provisions of paragraph (2)(b) of this section not later than March 31, 2000. The Executive Secretary shall determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (2)(b) of this section. These data shall also be representative of *Giardia lamblia* inactivation through the entire treatment plant and not just of certain treatment segments. Until the Executive Secretary approves this request, the system is required to conduct monitoring under the provisions of paragraph (2)(b) of this section.

(ii) In addition to the disinfection profile generated under paragraph (2)(b) of this section, a PWS that has existing operational data may use those data to develop a disinfection profile for additional years. Such systems may use these additional yearly disinfection profiles to develop a benchmark under the provisions of paragraph (3) of this section. The Executive Secretary shall determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (2)(b) of this section. These data shall also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(d) The system shall calculate the total inactivation ratio as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (2)(d)(i)(A) or (2)(d)(i)(B) of this section.

(A) Determine one inactivation ratio ( $CT_{calc}/CT_{99.9}$ ) before or at the first customer during peak hourly flow.

(B) Determine successive  $CT_{calc}/CT_{99.9}$  values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system shall calculate the total inactivation ratio by determining ( $CT_{calc}/CT_{99.9}$ ) for each sequence and then adding the ( $CT_{calc}/CT_{99.9}$ ) values together to determine sum of ( $CT_{calc}/CT_{99.9}$ ).

(ii) If the system uses more than one point of disinfectant application before the first customer, the system shall determine

the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ( $CT_{calc}/CT_{99.9}$ ) value of each segment and sum of ( $CT_{calc}/CT_{99.9}$ ) shall be calculated using the method in paragraph (b)(4)(i) of this section.

(iii) The system shall determine the total logs of inactivation by multiplying the value calculated in paragraph (2)(d)(i) or (ii) of this section by 3.0.

(e) A system that uses either chloramines and chlorine dioxide or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the Executive Secretary.

(f) The system shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the Executive Secretary for review as part of sanitary surveys conducted by the Executive Secretary.

### (3) Disinfection Benchmarking

(a) Any system required to develop a disinfection profile under the provisions of paragraphs (1) and (2) of this section and that decides to make a significant change to its disinfection practice shall consult with the Executive Secretary prior to making such change. Significant changes to disinfection practice are:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; and

(iv) Any other modification identified by the Executive Secretary.

(b) Any system that is modifying its disinfection practice shall calculate its disinfection benchmark using the procedure specified in paragraphs (3)(b)(i) through (ii) of this section.

(i) For each year of profiling data collected and calculated under paragraph (2) of this section, the system shall determine the lowest average monthly *Giardia lamblia* inactivation in each year of profiling data. The system shall determine the average *Giardia lamblia* inactivation for each calendar month for each year of profiling data by dividing the sum of daily *Giardia lamblia* of inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly average value (for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly logs of *Giardia lamblia* inactivation in each year of profiling data.

(c) A system that uses either chloramines, ozone or chlorine dioxide for primary disinfection must calculate the disinfection benchmark from the data the system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under paragraph (b)(i) above. This viral benchmark must be calculated in the same manner used to calculate the *Giardia lamblia* disinfection benchmark in paragraph (b)(i).

(d) The system shall submit information in paragraphs (3)(d)(i) through (iv) of this section to the Executive Secretary as part of its consultation process.

(i) A description of the proposed change;

(ii) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) under paragraph (2) of this section and benchmark as required by paragraph (3)(b) of this section; and

(iii) An analysis of how the proposed change will affect the current levels of disinfection.

(iv) Any additional information requested by the Executive Secretary.

### R309-215-15. Enhanced Treatment for *Cryptosporidium* (Federal Subpart W).

(1) General requirements.

(a) The rule requirements of this section establish or extend treatment technique requirements in lieu of maximum contaminant levels for *Cryptosporidium*. These requirements are in addition to requirements for filtration and disinfection in R309-200 and other parts of R309-215.

(b) Applicability. The requirements of this subpart apply to all surface water systems, which are public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water.

(i) Wholesale systems, as defined in R309-110, must comply with the requirements of this section based on the population of the largest system in the combined distribution system.

(ii) The requirements of this sub-section apply to systems required by these rules to provide filtration treatment, whether or not the system is currently operating a filtration system.

(c) Requirements. Systems subject to this subpart must comply with the following requirements:

(i) Systems must conduct an initial and a second round of source water monitoring for each plant that treats a surface water or GWUDI source. This monitoring may include sampling for *Cryptosporidium*, *E. coli*, and turbidity as described in R309-215-15(2) through R309-215-15(7), to determine what level, if any, of additional *Cryptosporidium* treatment they must provide.

(ii) Systems that plan to make a significant change to their disinfection practice must develop disinfection profiles and calculate disinfection benchmarks, as described in R309-215-15(9) through R309-215-15(10).

(iii) Filtered systems must determine their *Cryptosporidium* treatment bin classification as described in R309-215-15(11) and provide additional treatment for *Cryptosporidium*, if required, as described in R309-215-15(12). Filtered must implement *Cryptosporidium* treatment according to the schedule in R309-215-14.

(iv) Systems required to provide additional treatment for *Cryptosporidium* must implement microbial toolbox options that are designed and operated as described in R309-215-15(15) through R309-215-15(20).

(v) Systems must comply with the applicable recordkeeping and reporting requirements described in R309-215-15(21) through R309-215-15(22).

(vi) Systems must address significant deficiencies identified in sanitary surveys performed by EPA as described in R309-215-15(22).

(2) Source Water Monitoring Requirements.

(a) Initial round of source water monitoring. Systems must conduct the following monitoring on the schedule in paragraph (c) of this section unless they meet the monitoring exemption criteria in paragraph (d) of this section.

(i) Filtered systems serving at least 10,000 people must sample their source water for *Cryptosporidium*, *E. coli*, and turbidity at least monthly for 24 months.

(ii) (A) Filtered systems serving fewer than 10,000 people must sample their source water for *E. coli* at least once every two weeks for 12 months.

(B) A filtered system serving fewer than 10,000 people may avoid *E. coli* monitoring if the system notifies the Executive Secretary that it will monitor for *Cryptosporidium* as described in paragraph (a)(iv) of this section. The system must notify the Executive Secretary no later than 3 months prior to the date the system is otherwise required to start *E. coli* monitoring under R309-215-15(2)(c).

(iii) Filtered systems serving fewer than 10,000 people must sample their source water for *Cryptosporidium* at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following, based on monitoring conducted under paragraph (a)(iii) of this section:

(A) For systems using lake/reservoir sources, the annual mean *E. coli* concentration is greater than 10 *E. coli*/ 100 mL.

(B) For systems using flowing stream sources, the annual mean *E. coli* concentration is greater than 50 *E. coli*/ 100 mL.

(C) The system does not conduct *E. coli* monitoring as described in paragraph (a)(iii) of this section.

(D) Systems using ground water under the direct influence of surface water (GWUDI) must comply with the requirements of paragraph (a)(iv) of this section based on the *E. coli* level that applies to the nearest surface water body. If no surface water body is nearby, the system must comply based on the requirements that apply to systems using lake/reservoir sources.

(iv) For filtered systems serving fewer than 10,000 people, the Executive Secretary may approve monitoring for an indicator other than *E. coli* under paragraph (a)(ii) of this section. The Executive Secretary also may approve an alternative to the *E. coli* concentration in paragraph (a)(iii)(A), (B) or (D) of this section to trigger *Cryptosporidium* monitoring. This approval by the Executive Secretary must be provided to the system in writing and must include the basis for the Executive Secretary's determination that the alternative indicator and/or trigger level will provide a more accurate identification of whether a system will exceed the Bin 1 *Cryptosporidium* level in R309-215-15(11).

(v) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(b) Second round of source water monitoring. Systems must conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (a) of this section, unless they meet the monitoring exemption criteria in paragraph (d) of this section. Systems must conduct this monitoring on the schedule in paragraph (c) of this section.

(c) Monitoring schedule. Systems must begin the monitoring required in paragraphs (a) and (b) of this section no later than the month beginning with the date listed:

(i) Systems that serve at least 100,000 people must:

(A) begin the first round of source water monitoring no later than October 1, 2006; and

(B) begin the second round of source water monitoring no later than April 1, 2015.

(ii) Systems that serve from 50,000 to 99,999 people must:

(A) begin the first round of source water monitoring no later than April 1, 2007; and

(B) begin the second round of source water monitoring no later than October 1, 2015.

(iii) Systems that serve from 10,000 to 49,999 people must:

(A) begin the first round of source water monitoring no later than April 1, 2008; and

(B) begin the second round of source water monitoring no later than October 1, 2016.

(iv) Systems that serve less than 10,000 people and monitor for *E. coli* must:

(A) begin the first round of source water monitoring no later than October 1, 2008; and

(B) begin the second round of source water monitoring no later than October 1, 2017.

(C) Applies only to filtered systems.

(v) Systems that serve less than 10,000 people and monitor for *Cryptosporidium* must:

(A) begin the first round of source water monitoring no later than April 1, 2010; and

(B) begin the second round of source water monitoring no later than April 1, 2019.

(C) Applies to filtered systems that meet the conditions of paragraph (a)(iii) of this section.

(d) Monitoring avoidance.

(i) Filtered systems are not required to conduct source water monitoring under this sub-section if the system will provide a total of at least 5.5-log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in R309-215-15(12).

(ii) If a system chooses to provide the level of treatment in paragraph (d)(i) of this section rather than start source monitoring, the system must notify the Executive Secretary in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under R309-215-15(3). Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the Executive Secretary in writing that it will provide this level of treatment. Systems must install and operate technologies to provide this level of treatment by the applicable compliance dates in R309-215-15(13).

(e) Plants operating only part of the year. Systems with surface water plants that operate for only part of the year must conduct source water monitoring in accordance with this subpart, but with the following modifications:

(i) Systems must sample their source water only during the months that the plant operates unless the Executive Secretary specifies another monitoring period based on plant operating practices.

(ii) Systems with plants that operate less than six months per year and that monitor for *Cryptosporidium* must collect at least six *Cryptosporidium* samples per year during each of two years of monitoring. Samples must be evenly spaced throughout the period the plant operates.

(f)(i) New sources. A system that begins using a new source of surface water or GWUDI after the system is required to begin monitoring under paragraph (c) of this section must monitor the new source on a schedule the Executive Secretary approves. Source water monitoring must meet the requirements of this sub-section. The system must also meet the bin classification and *Cryptosporidium* treatment requirements of R309-215-15(11) and (12) for the new source on a schedule the Executive Secretary approves.

(ii) The requirements of R309-215-15(2)(f) apply to surface water systems that begin operation after the monitoring start date applicable to the system's size under paragraph (c) of this section.

(iii) The system must begin a second round of source water monitoring no later than 6 years following initial bin classification under R309-215-15(11).

(g) Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of R309-215-15(3) through R309-215-15(7) is a monitoring violation.

(h) Grandfathering monitoring data. Systems may use (grandfather) monitoring data collected prior to the applicable monitoring start date in paragraph (c) of this section to meet the initial source water monitoring requirements in paragraph (a) of this section. Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in R309-215-15(8).

### (3) Sampling schedules.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(i) Systems must submit sampling schedules no later than 3 months prior to the applicable date listed in R309-215-15(2)(c) for each round of required monitoring.

(ii) (A) Systems serving at least 10,000 people must submit their sampling schedule for the initial round of source water monitoring under R309-215-15(2)(a) to EPA

electronically at <https://intranet.epa.gov/lt2/>.

(B) If a system is unable to submit the sampling schedule electronically, the system may use an alternative approach for submitting the sampling schedule that EPA approves.

(iii) Systems serving fewer than 10,000 people must submit their sampling schedules for the initial round of source water monitoring R309-215-15(2)(a) to the Executive Secretary.

(iv) Systems must submit sampling schedules for the second round of source water monitoring R309-215-15(2)(b) to the Executive Secretary.

(v) If EPA or the Executive Secretary does not respond to a system regarding its sampling schedule, the system must sample at the reported schedule.

(b) Systems must collect samples within two days before or two days after the dates indicated in their sampling schedule (i.e., within a five-day period around the schedule date) unless one of the conditions of paragraph (b)(i) or (ii) of this section applies.

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the Executive Secretary approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(ii)(A) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in R309-215-15(5), or the failure of an approved laboratory to analyze the sample, then the system must collect a replacement sample.

(B) The system must collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the system demonstrates that collecting a replacement sample within this time frame is not feasible or the Executive Secretary approves an alternative resampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(c) Systems that fail to meet the criteria of paragraph (b) of this section for any source water sample required under R309-215-15(2) must revise their sampling schedules to add dates for collecting all missed samples. Systems must submit the revised schedule to the Executive Secretary for approval prior to when the system begins collecting the missed samples.

### (4) Sampling locations.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the Executive Secretary may approve one set of monitoring results to be used to satisfy the requirements of R309-215-15(2) for all plants.

(b) (i) Systems must collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants, unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve a system to collect a source water sample after chemical treatment. To grant this approval, the Executive Secretary must determine that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(c) Systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water



addition.

(d) Bank filtration.

(i) Systems that receive Cryptosporidium treatment credit for bank filtration under R309-200-5(5)(a)(ii) must collect source water samples in the surface water prior to bank filtration.

(ii) Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under R309-215-15(16)(c).

(e) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, must collect samples as specified in paragraph (e)(i) or (ii) of this section. The use of multiple sources during monitoring must be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, systems must collect samples from the tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems must collect samples at each source near the intake on the same day and must follow either paragraph (e)(ii)(A) or (B) of this section for sample analysis.

(A) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(B) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(f) Additional Requirements. Systems must submit a description of their sampling location(s) to the Executive Secretary at the same time as the sampling schedule required under R309-215-15(3). This description must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the Executive Secretary does not respond to a system regarding sampling location(s), the system must sample at the reported location(s).

(5) Analytical methods.

(a) Cryptosporidium. Systems must analyze for Cryptosporidium using Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002 or Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001, which are incorporated by reference. You may obtain a copy of these methods online from <http://www.epa.gov/safewater/disinfection/lt2> or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(i) Systems must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL as generated by the methods listed in paragraph (a) of this section. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters approved by EPA for the methods listed in paragraph (a) of this section, up to a packed pellet volume of at least 2 mL.

(ii) (A) Matrix spike (MS) samples, as required by the methods in paragraph (a) of this section, must be spiked and filtered by a laboratory approved for Cryptosporidium analysis under R309-215-15(6).

(B) If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

(iii) Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery (OPR) samples.

(b) E. coli. Systems must use methods for enumeration of E. coli in source water approved in R309-200-4(3) and (4).

(i) The time from sample collection to initiation of analysis may not exceed 30 hours unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve on a case-by-case basis the holding of an E. coli sample for up to 48 hours between sample collection and initiation of analysis if the Executive Secretary determines that analyzing an E. coli sample within 30 hours is not feasible. E. coli samples held between 30 to 48 hours must be analyzed by the Colilert reagent version of Standard Method 9223B as listed in R309-200-4(3) and (4).

(iii) Systems must maintain samples between 0 deg.C and 10 deg. C during storage and transit to the laboratory.

(c) Turbidity. Systems must use methods for turbidity measurement approved in R309-200-4(3) and (4).

(6) Approved laboratories.

(a) Cryptosporidium. Systems must have Cryptosporidium samples analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by an equivalent State laboratory certification program.

(b) E. coli. Any laboratory certified by the EPA, the National Environmental Laboratory Accreditation Conference or the State for total coliform or fecal coliform analysis under R309-200-4(3) and (4) is approved for E. coli analysis under this subpart when the laboratory uses the same technique for E. coli that the laboratory uses for R309-200-4(3), (4) and in R444-14-4(1).

(c) Turbidity. Measurements of turbidity must be made by a party approved by the State.

(7) Reporting source water monitoring results.

(a) Systems must report results from the source water monitoring required under R309-215-15(2) no later than 10 days after the end of the first month following the month when the sample is collected.

(b) (i) All systems serving at least 10,000 people must report the results from the initial source water monitoring required under R309-215-15(2)(a) to EPA electronically at <https://intranet.epa.gov/lt2/>.

(ii) If a system is unable to report monitoring results electronically, the system may use an alternative approach for reporting monitoring results that EPA approves.

(c) Systems serving fewer than 10,000 people must report results from the initial source water monitoring required under R309-215-15(2)(a) to the Executive Secretary.

(d) All systems must report results from the second round of source water monitoring required under R309-215-15(2)(b)

to the Executive Secretary.

(e) Systems must report the applicable information in paragraphs (e)(i) and (ii) of this section for the source water monitoring required under R309-215-15(2).

(i) Systems must report the following data elements for each Cryptosporidium analysis:

- (A) PWS ID.
- (B) Facility ID.
- (C) Sample collection date.
- (D) Sample type (field or matrix spike).
- (E) Sample volume filtered (L), to nearest 1/4 L.
- (F) Was 100% of filtered volume examined.
- (G) Number of oocysts counted.

(H) For matrix spike samples, systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(I) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(J) For samples in which less than 100% of sample volume is examined, systems must also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(ii) Systems must report the following data elements for each *E. coli* analysis:

- (A) PWS ID.
- (B) Facility ID.
- (C) Sample collection date.
- (D) Analytical method number.
- (E) Method type.
- (F) Source type (flowing stream, lake/reservoir, GWUDI).
- (G) *E. coli*/100 mL.
- (H) Turbidity. (Systems serving fewer than 10,000 people that are not required to monitor for turbidity under R309-215-15(2) are not required to report turbidity with their *E. coli* results.)

(8) Grandfathering previously collected data.

(a) (i) Systems may comply with the initial source water monitoring requirements of R309-215-15(2)(a) by grandfathering sample results collected before the system is required to begin monitoring (i.e., previously collected data). To be grandfathered, the sample results and analysis must meet the criteria in this section and the Executive Secretary must approve.

(ii) A filtered system may grandfather Cryptosporidium samples to meet the requirements of R309-215-15(2)(a) when the system does not have corresponding *E. coli* and turbidity samples. A system that grandfathers Cryptosporidium samples without *E. coli* and turbidity samples is not required to collect *E. coli* and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under R309-215-15(2)(a).

(b) *E. coli* sample analysis. The analysis of *E. coli* samples must meet the analytical method and approved laboratory requirements of R309-215-15(5) through R309-215-15(6).

(c) Cryptosporidium sample analysis. The analysis of Cryptosporidium samples must meet the criteria in this paragraph.

(i) Laboratories analyzed Cryptosporidium samples using one of the analytical methods in paragraphs (c)(i)(A) through (D) of this section, which are incorporated by reference. You may obtain a copy of these methods on-line from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave, NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone:

202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(A) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002.

(B) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001.

(C) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-025.

(D) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-026.

(E) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-006.

(F) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-001.

(ii) For each Cryptosporidium sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packed pellet or as much volume as could be filtered by 2 filters that EPA approved for the methods listed in paragraph (c)(1) of this section.

(d) Sampling location. The sampling location must meet the conditions in R309-215-15(4).

(e) Sampling frequency. Cryptosporidium samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999. Sample collection intervals may vary for the conditions specified in R309-215-15(3)(b)(i) and (ii) if the system provides documentation of the condition when reporting monitoring results.

(i) The Executive Secretary may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the system conducts additional monitoring the Executive Secretary specifies to ensure that the data used to comply with the initial source water monitoring requirements of R309-215-15(2)(a) are seasonally representative and unbiased.

(ii) Systems may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, systems must follow the monthly averaging procedure in R309-215-15(11)(b)(v) when calculating the bin classification for filtered systems.

(f) Reporting monitoring results for grandfathering. Systems that request to grandfather previously collected monitoring results must report the following information by the applicable dates listed in this paragraph. Systems serving at least 10,000 people must report this information to EPA unless the Executive Secretary approves reporting to the Executive Secretary rather than EPA. Systems serving fewer than 10,000 people must report this information to the Executive Secretary.

(i) Systems must report that they intend to submit previously collected monitoring results for grandfathering. This report must specify the number of previously collected results the system will submit, the dates of the first and last sample, and whether a system will conduct additional source water monitoring to meet the requirements of R309-215-15(2)(a). Systems must report this information no later than the date the sampling schedule under R309-215-15(3) is required.

(ii) Systems must report previously collected monitoring

results for grandfathering, along with the associated documentation listed in paragraphs (f)(ii)(A) through (D) of this section, no later than two months after the applicable date listed in R309-215-15(2)(c).

(A) For each sample result, systems must report the applicable data elements in R309-215-15(7).

(B) Systems must certify that the reported monitoring results include all results the system generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this subpart, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in this section.

(C) Systems must certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed. Systems must report a description of the sampling location(s), which must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

(D) For Cryptosporidium samples, the laboratory or laboratories that analyzed the samples must provide a letter certifying that the quality control criteria specified in the methods listed in paragraph (c)(i) of this section were met for each sample batch associated with the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(g) If the Executive Secretary determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the system, such as a drought, the Executive Secretary may disapprove the data. Alternatively, the Executive Secretary may approve the previously collected data if the system reports additional source water monitoring data, as determined by the Executive Secretary, to ensure that the data set used under R309-215-15(11) represents average source water conditions for the system.

(h) If a system submits previously collected data that fully meet the number of samples required for initial source water monitoring under R309-215-15(2)(a) and some of the data are rejected due to not meeting the requirements of this section, systems must conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves. Systems are not required to begin this additional monitoring until two months after notification that data have been rejected and additional monitoring is necessary.

(9) Disinfection Profiling and Benchmarking Requirements - Requirements when making a significant change in disinfection practice.

(a) Following the completion of initial source water monitoring under R309-215-15(2)(a), a system that plans to make a significant change to its disinfection practice, as defined in paragraph (b) of this section, must develop disinfection profiles and calculate disinfection benchmarks for Giardia lamblia and viruses as described in R309-215-15(10). Prior to changing the disinfection practice, the system must notify the Executive Secretary and must include in this notice the information in paragraphs (a)(i) through (iii) of this section.

(i) A completed disinfection profile and disinfection benchmark for Giardia lamblia and viruses as described in R309-215-15(10).

(ii) A description of the proposed change in disinfection practice.

(iii) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined

as follows:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; or

(iv) Any other modification identified by the Executive Secretary as a significant change to disinfection practice.

(10) Developing the disinfection profile and benchmark.

(a) Systems required to develop disinfection profiles under R309-215-15(9) must follow the requirements of this section. Systems must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for Giardia lamblia and viruses. If systems monitor more frequently, the monitoring frequency must be evenly spaced. Systems that operate for fewer than 12 months per year must monitor weekly during the period of operation. Systems must determine log inactivation for Giardia lamblia through the entire plant, based on  $CT_{99.9}$  values in Tables 1.1 through 1.6, 2.1 and 3.1 of Section 141.74(b) in the code of Federal Regulations as applicable (available from the Division). Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the Executive Secretary.

(b) Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in paragraphs (b)(i) through (iv) of this section. Systems with more than one point of disinfectant application must conduct the monitoring in paragraphs (b)(i) through (iv) of this section for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3) and (4).

(i) For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(ii) For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(iii) The disinfectant contact time(s) (t) must be determined during peak hourly flow.

(iv) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each additional point of disinfectant application must be measured during peak hourly flow.

(c) In lieu of conducting new monitoring under paragraph (b) of this section, systems may elect to meet the requirements of paragraphs (c)(i) or (ii) of this section.

(i) Systems that have at least one year of existing data that are substantially equivalent to data collected under the provisions of paragraph (b) of this section may use these data to develop disinfection profiles as specified in this section if the system has neither made a significant change to its treatment practice nor changed sources since the data were collected. Systems may develop disinfection profiles using up to three years of existing data.

(ii) Systems may use disinfection profile(s) developed under R309-215-14 in lieu of developing a new profile if the system has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Systems that have not developed a virus profile under R309-251-14 must develop a virus profile using the same monitoring data on which the Giardia lamblia profile is based.

(d) Systems must calculate the total inactivation ratio for Giardia lamblia as specified in paragraphs (d)(i) through (iii) of this section.

(i) Systems using only one point of disinfectant

application may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (d)(1)(i) or (ii) of this section.

(A) Determine one inactivation ratio ( $CT_{calc}/CT_{99.9}$ ) before or at the first customer during peak hourly flow.

(B) Determine successive  $CT_{calc}/CT_{99.9}$  values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The system must calculate the total inactivation ratio by determining ( $CT_{calc}/CT_{99.9}$ ) for each sequence and then adding the ( $CT_{calc}/CT_{99.9}$ ) values together to determine the sum of ( $CT_{calc}/CT_{99.9}$ ).

(ii) Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ( $CT_{calc}/CT_{99.9}$ ) value of each segment and the sum of ( $CT_{calc}/CT_{99.9}$ ) must be calculated using the method in paragraph (d)(i)(B) of this section.

(iii) The system must determine the total logs of inactivation by multiplying the value calculated in paragraph (d)(i) or (d)(ii) of this section by 3.0.

(iv) Systems must calculate the log of inactivation for viruses using a protocol approved by the Executive Secretary.

(e) Systems must use the procedures specified in paragraphs (e)(i) and (ii) of this section to calculate a disinfection benchmark.

(i) For each year of profiling data collected and calculated under paragraphs (a) through (d) of this section, systems must determine the lowest mean monthly level of both Giardia lamblia and virus inactivation. Systems must determine the mean Giardia lamblia and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly Giardia lamblia and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for systems with one year of profiling data) or the mean of the lowest monthly mean values (for systems with more than one year of profiling data) of Giardia lamblia and virus log inactivation in each year of profiling data.

(11) Treatment Technique Requirements - Bin classification for filtered systems.

(a) Following completion of the initial round of source water monitoring required under R309-215-15(2)(a), filtered systems must calculate an initial Cryptosporidium bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the Cryptosporidium results reported under R309-215-15(2)(a) and must follow the procedures in paragraphs (b)(i) through (v) of this section.

(b)(i) For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For systems that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which Cryptosporidium samples were collected.

(iii) For systems that serve fewer than 10,000 people and monitor for Cryptosporidium for only one year (i.e., collect 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(iv) For systems with plants operating only part of the year that monitor fewer than 12 months per year under R309-215-15(2)(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of Cryptosporidium monitoring.

(v) If the monthly Cryptosporidium sampling frequency

varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs (b)(i) through (iv) of this section.

(c) Filtered systems must determine their initial bin classification from the following and using the Cryptosporidium bin concentration calculated under paragraphs (a) and (b) of this section:

(i) Systems that are required to monitor for Cryptosporidium under R309-215-15(2):

(A) with a cryptosporidium concentration of less than 0.075 oocyst/L, the bin classification is Bin 1.

(B) with a cryptosporidium concentration of 0.075 oocysts/L to less than 1.0 oocysts/L, the bin classification is Bin 2.

(C) with a cryptosporidium concentration of 1.0 oocysts/L to less than 3.0 oocysts/L, the bin classification is Bin 3.

(D) with a cryptosporidium concentration of equal to or greater than 3.0 oocysts/L, the bin classification is Bin 4.

(ii) Systems serving fewer than 10,000 people and not required to monitor for Cryptosporidium under R309-215-15(2)(a)(iii), the concentration of cryptosporidium is not applicable and their bin classification is Bin 1.

(iii) Based on calculations in paragraph (a) or (d) of this section, as applicable.

(d) Following completion of the second round of source water monitoring required under R309-215-15(2)(b), filtered systems must recalculate their Cryptosporidium bin concentration using the Cryptosporidium results reported under R309-215-15(2)(b) and following the procedures in paragraphs (b)(i) through (iv) of this section. Systems must then redetermine their bin classification using this bin concentration and the table in paragraph (c) of this section.

(e)(i) Filtered systems must report their initial bin classification under paragraph (c) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete initial source water monitoring based on the schedule in R309-215-15(2)(c).

(ii) Systems must report their bin classification under paragraph (d) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete the second round of source water monitoring based on the schedule in R309-215-15(2)(c).

(iii) The bin classification report to the Executive Secretary must include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(f) Failure to comply with the conditions of paragraph (e) of this section is a violation of the treatment technique requirement.

(12) Filtered system additional Cryptosporidium treatment requirements.

(a) Filtered systems must provide the level of additional treatment for Cryptosporidium specified in this paragraph based on their bin classification as determined under R309-215-15(11) and according to the schedule in R309-215-15(13). The filtration treatment used by the system in this paragraph must be utilized in full compliance with the requirements of R309-200-5(5), R309-200-7, R309-215-8 and 9.

(i) If the system bin classification is Bin 1 and the system uses:

(A) Conventional filtration treatment including softening there is no additional cryptosporidium treatment required.

(B) Direct filtration there is no additional cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is no additional cryptosporidium treatment required.

(D) Alternative filtration technologies there is no

additional cryptosporidium treatment required.

(ii) If the system bin classification is Bin 2 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 1-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 1.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 1-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 4.0-log.

(iii) If the system bin classification is Bin 3 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 2.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.0-log.

(iv) If the system bin classification is Bin 4 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2.5-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 3-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2.5-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.5-log.

(b)(i) Filtered systems must use one or more of the treatment and management options listed in R309-215-15(14), termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required in paragraph (a) of this section.

(ii) Systems classified in Bin 3 and Bin 4 must achieve at least 1-log of the additional Cryptosporidium treatment required under paragraph (a) of this section using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in R309-215-15(15) through R309-215-15(19).

(c) Failure by a system in any month to achieve treatment credit by meeting criteria in R309-215-15(15) through R309-215-15(19) for microbial toolbox options that is at least equal to the level of treatment required in paragraph (a) of this section is a violation of the treatment technique requirement.

(d) If the Executive Secretary determines during a sanitary survey or an equivalent source water assessment that after a system completed the monitoring conducted under R309-215-15(2)(a) or R309-215-15(2)(b), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by Cryptosporidium, the system must take actions specified by the Executive Secretary to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options listed in R309-215-15(14).

(13) Schedule for compliance with Cryptosporidium treatment requirements.

(a) Following initial bin classification under R309-215-15(11)(c), filtered systems must provide the level of treatment for Cryptosporidium required under R309-215-15(12) according

to the schedule in paragraph (c) of this section.

(b) Cryptosporidium treatment compliance dates.

(i) Systems that serve at least 100,000 people must comply with Cryptosporidium treatment requirements no later than April 1, 2012.

(ii) Systems that serve from 50,000 to 99,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2012.

(iii) Systems that serve from 10,000 to 49,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2013.

(iv) Systems that serve less than 10,000 people must comply with Cryptosporidium treatment requirements no later than October 1, 2014.

(v) The Executive Secretary may allow up to an additional two years for complying with the treatment requirement for systems making capital improvements.

(c) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under R309-215-15(11)(d), the system must provide the level of treatment for Cryptosporidium required under R309-215-15(12) on a schedule the Executive Secretary approves.

(14) Microbial toolbox options for meeting Cryptosporidium treatment requirements.

(a) Systems receive the treatment credits listed in the table in paragraph (b) of this section by meeting the conditions for microbial toolbox options described in R309-215-15(15) through R309-215-15(19). Systems apply these treatment credits to meet the treatment requirements in R309-215-15(12).

(b) The following sub-section summarizes options in the microbial toolbox and the Cryptosporidium treatment credit with design and implementation criteria.

(i) Source Protection and Management Toolbox Options:

(A) Watershed control program: 0.5-log credit for Executive Secretary-approved program comprising required elements, annual program status report to Executive Secretary, and regular watershed survey. Specific criteria are in R309-215-15(15) (a).

(B) Alternative source/intake management: No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. Specific criteria are in R309-215-15(15) (b).

(ii) Pre Filtration Toolbox Options:

(A) Presedimentation basin with coagulation: 0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative Executive Secretary-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through basins. Specific criteria are in R309-215-15(16) (a).

(B) Two-stage lime softening: 0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. Specific criteria are in R309-215-15(16) (b).

(C) Bank filtration: 0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. Systems using wells followed by filtration when conducting source water monitoring must sample the well to determine bin classification and are not eligible for additional credit. Specific criteria are in R309-215-15(16) (c).

(iii) Treatment Performance Toolbox Options:

(A) Combined filter performance: 0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU

in at least 95 percent of measurements each month. Specific criteria are in R309-215-15(17) (a).

(B) Individual filter performance: 0.5-log credit (in addition to 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. Specific criteria are in R309-215-15(17) (b).

(C) Demonstration of performance: Credit awarded to unit process or treatment train based on a demonstration to the Executive Secretary with a Executive Secretary-approved protocol. Specific criteria are in R309-215-15(17) (c).

(iv) Additional Filtration Toolbox Options:

(A) Bag or cartridge filters (individual filters): Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(B) Bag or cartridge filters (in series): Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(C) Membrane filtration: Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. Specific criteria are in R309-215-15(18) (b).

(D) Second stage filtration: 0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. Specific criteria are in R309-215-15(18) (c).

(E) Slow sand filters: 2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option. Specific criteria are in R309-215-15(18) (d).

(v) Inactivation Toolbox Options:

(A) Chlorine dioxide: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(B) Ozone: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(C) UV: Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. Specific criteria in R309-215-15(19) (d).

(15) Source toolbox components.

(a) Watershed control program. Systems receive 0.5-log Cryptosporidium treatment credit for implementing a watershed control program that meets the requirements of this section.

(i) Systems that intend to apply for the watershed control program credit must notify the Executive Secretary of this intent no later than two years prior to the treatment compliance date applicable to the system in R309-215-15(13).

(ii) Systems must submit to the Executive Secretary a proposed watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13). The Executive Secretary must approve the watershed control plan for the system to receive watershed control program treatment credit. The watershed control plan must include the elements in paragraphs (a)(ii)(A) through (D) of this section.

(A) Identification of an "area of influence" outside of which the likelihood of Cryptosporidium or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under paragraph (a)(v)(B) of this section.

(B) Identification of both potential and actual sources of Cryptosporidium contamination and an assessment of the relative impact of these sources on the system's source water quality.

(C) An analysis of the effectiveness and feasibility of control measures that could reduce Cryptosporidium loading

from sources of contamination to the system's source water.

(D) A statement of goals and specific actions the system will undertake to reduce source water Cryptosporidium levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(iii) Systems with existing watershed control programs (i.e., programs in place on January 5, 2006) are eligible to seek this credit. Their watershed control plans must meet the criteria in paragraph (a)(ii) of this section and must specify ongoing and future actions that will reduce source water Cryptosporidium levels.

(iv) If the Executive Secretary does not respond to a system regarding approval of a watershed control plan submitted under this section and the system meets the other requirements of this section, the watershed control program will be considered approved and 0.5 log Cryptosporidium treatment credit will be awarded unless and until the Executive Secretary subsequently withdraws such approval.

(v) Systems must complete the actions in paragraphs (a)(v)(A) through (C) of this section to maintain the 0.5-log credit.

(A) Submit an annual watershed control program status report to the Executive Secretary. The annual watershed control program status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the Executive Secretary or as the result of the watershed survey conducted under paragraph (a)(v)(B) of this section. It must also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey. If a system determines during implementation that making a significant change to its approved watershed control program is necessary, the system must notify the Executive Secretary prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must also list in its notification the actions the system will take to mitigate this effect.

(B) Undergo a watershed sanitary survey every three years for community water systems and every five years for non-community water systems and submit the survey report to the Executive Secretary. The survey must be conducted according to State guidelines and by persons the Executive Secretary approves.

(I) The watershed sanitary survey must meet the following criteria: encompass the region identified in the Executive Secretary-approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water Cryptosporidium levels; and identify any significant new sources of Cryptosporidium.

(II) If the Executive Secretary determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, systems must undergo another watershed sanitary survey by a date the Executive Secretary requires, which may be earlier than the regular date in paragraph (a)(v)(B) of this section.

(C) The system must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The Executive Secretary may approve systems to withhold from the public portions of the annual status report, watershed control plan, and watershed sanitary survey based on water supply security considerations.

(vi) If the Executive Secretary determines that a system is

not carrying out the approved watershed control plan, the Executive Secretary may withdraw the watershed control program treatment credit.

(b) Alternative source. (i) A system may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the Executive Secretary approves, a system may determine its bin classification under R309-215-15(11) based on the alternative source monitoring results.

(ii) If systems conduct alternative source monitoring under paragraph (b)(i) of this section, systems must also monitor their current plant intake concurrently as described in R309-215-15(2).

(iii) Alternative source monitoring under paragraph (b)(i) of this section must meet the requirements for source monitoring to determine bin classification, as described in R309-215-15(2) through R309-215-15(7). Systems must report the alternative source monitoring results to the Executive Secretary, along with supporting information documenting the operating conditions under which the samples were collected.

(iv) If a system determines its bin classification under R309-215-15(11) using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in R309-215-15(13).

(16) Pre-filtration treatment toolbox components.

(a) Presedimentation. Systems receive 0.5-log Cryptosporidium treatment credit for a presedimentation basin during any month the process meets the criteria in this paragraph.

(i) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a surface water or GWUDI source.

(ii) The system must continuously add a coagulant to the presedimentation basin.

(iii) The presedimentation basin must achieve the performance criteria in paragraph (iii)(A) or (B) of this section.

(A) Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements in the presedimentation process influent and effluent and must be calculated as follows:  $\log_{10}(\text{monthly mean of daily influent turbidity}) - \log_{10}(\text{monthly mean of daily effluent turbidity})$ .

(B) Complies with Executive Secretary-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(b) Two-stage lime softening. Systems receive an additional 0.5-log Cryptosporidium treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or GWUDI source.

(c) Bank filtration. Systems receive Cryptosporidium treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Systems using bank filtration when they begin source water monitoring under R309-215-15(2)(a) must collect samples as described in R309-215-15(4)(d) and are not eligible for this credit.

(i) Wells with a ground water flow path of at least 25 feet receive 0.5-log treatment credit; wells with a ground water flow path of at least 50 feet receive 1.0-log treatment credit. The ground water flow path must be determined as specified in paragraph (c)(iv) of this section.

(ii) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A system must characterize the aquifer at the well site to determine aquifer properties. Systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(iii) Only horizontal and vertical wells are eligible for treatment credit.

(iv) For vertical wells, the ground water flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100 year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the ground water flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(v) Systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the Executive Secretary and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the Executive Secretary determines that microbial removal has been compromised, the Executive Secretary may revoke treatment credit until the system implements corrective actions approved by the Executive Secretary to remediate the problem.

(vi) Springs and infiltration galleries are not eligible for treatment credit under this section, but are eligible for credit under R309-215-15(17)(c).

(vii) Bank filtration demonstration of performance. The Executive Secretary may approve Cryptosporidium treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in paragraphs (c)(i)-(v) of this section.

(A) The study must follow a Executive Secretary-approved protocol and must involve the collection of data on the removal of Cryptosporidium or a surrogate for Cryptosporidium and related hydrogeologic and water quality parameters during the full range of operating conditions.

(B) The study must include sampling both from the production well(s) and from monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well(s).

(17) Treatment performance toolbox components.

(a) Combined filter performance. Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log Cryptosporidium treatment credit during any month the system meets the criteria in this paragraph. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95 percent of the measurements. Turbidity must be measured as described in R309-200-4(3) and (4).

(b) Individual filter performance. Systems using conventional filtration treatment or direct filtration treatment receive 0.5-log Cryptosporidium treatment credit, which can be in addition to the 0.5-log credit under paragraph (a) of this section, during any month the system meets the criteria in this paragraph. Compliance with these criteria must be based on individual filter turbidity monitoring as described in R309-215-9(4) or (5), as applicable.

(i) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(ii) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(iii) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of paragraph (b)(i) or (ii) of this section during any month does not receive a treatment technique violation under R309-215-15(12)(c) if the Executive Secretary determines the following:

(A) The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, and maintenance.

(B) The system has experienced no more than two such failures in any calendar year.

(c) Demonstration of performance. The Executive Secretary may approve Cryptosporidium treatment credit for drinking water treatment processes based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than or less than the prescribed treatment credits in R309-215-15(12) or R309-215-15(16) through R309-215-15(19) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(i) Systems cannot receive the prescribed treatment credit for any toolbox option in R309-215-15(16) through R309-215-15(19) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(ii) The demonstration of performance study must follow a Executive Secretary-approved protocol and must demonstrate the level of Cryptosporidium reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(iii) Approval by the Executive Secretary must be in writing and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The Executive Secretary may designate such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

(18) Additional filtration toolbox components.

(a) Bag and cartridge filters. Systems receive Cryptosporidium treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in paragraphs (a)(i) through (x) of this section. To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of paragraphs (a)(i) through (ix) of this section to the Executive Secretary. The filters must treat the entire plant flow taken from a surface water source.

(i) The Cryptosporidium treatment credit awarded to bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in paragraphs (a)(ii) through (a)(ix) of this section. A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria specified in paragraphs (a)(ii) through (ix) of this section.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of Cryptosporidium. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iii) Challenge testing must be conducted using Cryptosporidium or a surrogate that is removed no more

efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(iv) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using the following equation: Maximum Feed Concentration =  $1 \times 10^4 \times$  (Filtrate Detection Limit).

(v) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(vi) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this subpart.

(vii) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:  $LRV = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ . Where: LRV = log removal value demonstrated during challenge testing;  $C_f$  = the feed concentration measured during the challenge test; and  $C_p$  = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term  $C_p$  must be set equal to the detection limit.

(viii) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter ( $LRV_{\text{filter}}$ ) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(ix) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest  $LRV_{\text{filter}}$  among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of  $LRV_{\text{filter}}$  values for the various filters tested. The percentile is defined by  $(i/(n+1))$  where  $i$  is the rank of  $n$  individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(x) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the Executive Secretary.

(b) Membrane filtration.

(i) Systems receive Cryptosporidium treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in R309-110 are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under paragraph (b)(i)(A) and (B) of this section.

(A) The removal efficiency demonstrated during challenge testing conducted under the conditions in paragraph (b)(ii) of this section.

(B) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in paragraph (b)(iii) of



this section.

(ii) Challenge Testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the results of challenge testing to the Executive Secretary. Challenge testing must be conducted according to the criteria in paragraphs (b)(ii)(A) through (G) of this section. Systems may use data from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria in paragraphs (b)(ii)(A) through (G) of this section.

(A) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(B) Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(C) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation: Maximum Feed Concentration =  $3.16 \times 10^6 \times (\text{Filtrate Detection Limit})$ .

(D) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

(E) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation:  $\text{LRV} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ . Where: LRV = log removal value demonstrated during the challenge test;  $C_f$  = the feed concentration measured during the challenge test; and  $C_p$  = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term  $C_p$  is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(F) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ( $\text{LRV}_{\text{C-Test}}$ ). If fewer than 20 modules are tested, then  $\text{LRV}_{\text{C-Test}}$  is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then  $\text{LRV}_{\text{C-Test}}$  is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by  $(i/(n+1))$  where  $i$  is the rank of  $n$  individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(G) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the *Cryptosporidium* removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the

system that was not directly challenge tested in order to verify *Cryptosporidium* removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(H) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the Executive Secretary.

(iii) Direct integrity testing. Systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in paragraphs (b)(iii)(A) through (F) of this section. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

(A) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(B) The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

(C) The direct integrity test must have a sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the Executive Secretary, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in either paragraph (b)(iii)(C)(I) or (II) of this section as applicable to the type of direct integrity test the system uses.

(I) For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation:  $\text{LRV}_{\text{DIT}} = \text{LOG}_{10} (Q_p / (\text{VCF} \times Q_{\text{breach}}))$  Where:  $\text{LRV}_{\text{DIT}}$  = the sensitivity of the direct integrity test;  $Q_p$  = total design filtrate flow from the membrane unit;  $Q_{\text{breach}}$  = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

(II) For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation:  $\text{LRV}_{\text{DIT}} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$  Where:  $\text{LRV}_{\text{DIT}}$  = the sensitivity of the direct integrity test;  $C_f$  = the typical feed concentration of the marker used in the test; and  $C_p$  = the filtrate concentration of the marker from an integral membrane unit.

(D) Systems must establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the Executive Secretary.

(E) If the result of a direct integrity test exceeds the control limit established under paragraph (b)(iii)(D) of this section, the system must remove the membrane unit from service. Systems must conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

(F) Systems must conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The Executive Secretary may approve less frequent testing, based on demonstrated

process reliability, the use of multiple barriers effective for *Cryptosporidium*, or reliable process safeguards.

(iv) Indirect integrity monitoring. Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in paragraphs (b)(iv)(A) through (E) of this section. Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in paragraphs (b)(iii)(A) through (E) of this section is not subject to the requirements for continuous indirect integrity monitoring. Systems must submit a monthly report to the Executive Secretary summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(A) Unless the Executive Secretary approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(B) Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

(C) Continuous monitoring must be separately conducted on each membrane unit.

(D) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must immediately be performed on the associated membrane unit as specified in paragraphs (b)(iii)(A) through (E) of this section.

(E) If indirect integrity monitoring includes a Executive Secretary-approved alternative parameter and if the alternative parameter exceeds a Executive Secretary-approved control limit for a period greater than 15 minutes, direct integrity testing must immediately be performed on the associated membrane units as specified in paragraphs (b)(iii)(A) through (E) of this section.

(c) Second stage filtration. Systems receive 0.5-log *Cryptosporidium* treatment credit for a separate second stage of filtration that consists of sand, dual media, GAC, or other fine grain media following granular media filtration if the Executive Secretary approves. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a surface water or GWUDI source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The Executive Secretary must approve the treatment credit based on an assessment of the design characteristics of the filtration process.

(d) Slow sand filtration (as secondary filter). Systems are eligible to receive 2.5-log *Cryptosporidium* treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or GWUDI source and no disinfectant residual is present in the influent water to the slow sand filtration process. The Executive Secretary must approve the treatment credit based on an assessment of the design characteristics of the filtration process. This paragraph does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(19) Inactivation toolbox components.

(a) Calculation of CT values. (i) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under paragraph (b) or (c) of this section must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in R309-200-4(3) and (4).

(ii) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with

a measurable disinfectant residual level and a liquid volume. Under this approach, systems must add the *Cryptosporidium* CT values in each segment to determine the total CT for the treatment plant.

(b) CT values for chlorine dioxide and ozone. (i) Systems receive the *Cryptosporidium* treatment credit listed in this paragraph by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in paragraph (a) of this section.

(ii) CT values ((MG)(MIN)/L) for *Cryptosporidium* inactivation by Chlorine Dioxide listed by the log credit with inactivation listed by water temperature in degrees Celsius.

(A) 0.25 Log Credit:

(I) less than or equal to 0.5 degrees: 159;

(II) 1 degree: 153;

(III) 2 degrees: 140;

(IV) 3 degrees: 128;

(V) 5 degrees: 107;

(VI) 7 degrees: 90;

(VII) 10 degrees: 69;

(VIII) 15 degrees: 45;

(IX) 20 degrees: 29;

(X) 25 degrees: 19; and

(XI) 30 degrees: 12.

(B) 0.5 Log Credit:

(I) less than or equal to 0.5 degrees: 319;

(II) 1 degree: 305;

(III) 2 degrees: 279;

(IV) 3 degrees: 256;

(V) 5 degrees: 214;

(VI) 7 degrees: 180;

(VII) 10 degrees: 138;

(VIII) 15 degrees: 89;

(IX) 20 degrees: 58;

(X) 25 degrees: 38; and

(XI) 30 degrees: 24.

(C) 1.0 Log Credit:

(I) less than or equal to 0.5 degrees: 637;

(II) 1 degree: 610;

(III) 2 degrees: 558;

(IV) 3 degrees: 511;

(V) 5 degrees: 429;

(VI) 7 degrees: 360;

(VII) 10 degrees: 277;

(VIII) 15 degrees: 179;

(IX) 20 degrees: 116;

(X) 25 degrees: 75; and

(XI) 30 degrees: 49.

(D) 1.5 Log Credit:

(I) less than or equal to 0.5 degrees: 956;

(II) 1 degree: 915;

(III) 2 degrees: 838;

(IV) 3 degrees: 767;

(V) 5 degrees: 643;

(VI) 7 degrees: 539;

(VII) 10 degrees: 415;

(VIII) 15 degrees: 268;

(IX) 20 degrees: 174;

(X) 25 degrees: 113; and

(XI) 30 degrees: 73.

(E) 2.0 Log Credit:

(I) less than or equal to 0.5 degrees: 1275;

(II) 1 degree: 1220;

(III) 2 degrees: 1117;

(IV) 3 degrees: 1023;

(V) 5 degrees: 858;

(VI) 7 degrees: 719;

(VII) 10 degrees: 553;

(VIII) 15 degrees: 357;

- (IX) 20 degrees: 232;
- (X) 25 degrees: 150; and
- (XI) 30 degrees: 98.
- (F) 2.5 Log Credit:
- (I) less than or equal to 0.5 degrees: 1594;
- (II) 1 degree: 1525;
- (III) 2 degrees: 1396;
- (IV) 3 degrees: 1278;
- (V) 5 degrees: 1072;
- (VI) 7 degrees: 899;
- (VII) 10 degrees: 691;
- (VIII) 15 degrees: 447;
- (IX) 20 degrees: 289;
- (X) 25 degrees: 188; and
- (XI) 30 degrees: 122.
- (G) 3.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 1912;
- (II) 1 degree: 1830;
- (III) 2 degrees: 1675;
- (IV) 3 degrees: 1534;
- (V) 5 degrees: 1286;
- (VI) 7 degrees: 1079;
- (VII) 10 degrees: 830;
- (VIII) 15 degrees: 536;
- (IX) 20 degrees: 347;
- (X) 25 degrees: 226; and
- (XI) 30 degrees: 147.

(F) Systems may use this equation to determine log credit between the indicated values above:  $\text{Log credit} = (0.001506 \times (1.09116)^{\text{Temp}}) \times \text{CT}$ .

(ii) Systems receive the Cryptosporidium treatment credit listed in this paragraph by meeting the corresponding ozone CT values for the applicable water temperature, as described in paragraph (a) of this section. CT values ((MG)(MIN)/L) for Cryptosporidium inactivation by Ozone listed by the log credit with inactivation listed by water temperature in degrees Celsius.

- (A) 0.25 Log Credit:
- (I) less than or equal to 0.5 degrees: 6.0;
- (II) 1 degree: 5.8;
- (III) 2 degrees: 5.2;
- (IV) 3 degrees: 4.8;
- (V) 5 degrees: 4.0;
- (VI) 7 degrees: 3.3;
- (VII) 10 degrees: 2.5;
- (VIII) 15 degrees: 1.6;
- (IX) 20 degrees: 1.0;
- (X) 25 degrees: 0.6; and
- (XI) 30 degrees: 0.39.
- (B) 0.5 Log Credit:
- (I) less than or equal to 0.5 degrees: 12;
- (II) 1 degree: 12;
- (III) 2 degrees: 10;
- (IV) 3 degrees: 9.5;
- (V) 5 degrees: 7.9;
- (VI) 7 degrees: 6.5;
- (VII) 10 degrees: 4.9;
- (VIII) 15 degrees: 3.1;
- (IX) 20 degrees: 2.0;
- (X) 25 degrees: 1.2; and
- (XI) 30 degrees: 0.78.
- (C) 1.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 24;
- (II) 1 degree: 23;
- (III) 2 degrees: 21;
- (IV) 3 degrees: 19;
- (V) 5 degrees: 16;
- (VI) 7 degrees: 13;
- (VII) 10 degrees: 9.9;
- (VIII) 15 degrees: 6.2;

- (IX) 20 degrees: 3.9;
- (X) 25 degrees: 2.5; and
- (XI) 30 degrees: 1.6.
- (D) 1.5 Log Credit:
- (I) less than or equal to 0.5 degrees: 36;
- (II) 1 degree: 35;
- (III) 2 degrees: 31;
- (IV) 3 degrees: 29;
- (V) 5 degrees: 24;
- (VI) 7 degrees: 20;
- (VII) 10 degrees: 15;
- (VIII) 15 degrees: 9.3;
- (IX) 20 degrees: 5.9;
- (X) 25 degrees: 3.7; and
- (XI) 30 degrees: 2.4.
- (E) 2.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 48;
- (II) 1 degree: 46;
- (III) 2 degrees: 42;
- (IV) 3 degrees: 38;
- (V) 5 degrees: 32;
- (VI) 7 degrees: 26;
- (VII) 10 degrees: 20;
- (VIII) 15 degrees: 12;
- (IX) 20 degrees: 7.8;
- (X) 25 degrees: 4.9; and
- (XI) 30 degrees: 3.1.

(F) 2.5 Log Credit:

- (I) less than or equal to 0.5 degrees: 60;
- (II) 1 degree: 58;
- (III) 2 degrees: 52;
- (IV) 3 degrees: 48;
- (V) 5 degrees: 40;
- (VI) 7 degrees: 33;
- (VII) 10 degrees: 25;
- (VIII) 15 degrees: 16;
- (IX) 20 degrees: 9.8;
- (X) 25 degrees: 6.2; and
- (XI) 30 degrees: 3.9.

(G) 3.0 Log Credit:

- (I) less than or equal to 0.5 degrees: 72;
- (II) 1 degree: 69;
- (III) 2 degrees: 63;
- (IV) 3 degrees: 57;
- (V) 5 degrees: 47;
- (VI) 7 degrees: 39;
- (VII) 10 degrees: 30;
- (VIII) 15 degrees: 19;
- (IX) 20 degrees: 12;
- (X) 25 degrees: 7.4; and
- (XI) 30 degrees: 4.7.

(F) Systems may use this equation to determine log credit between the indicated values:  $\text{Log credit} = (0.0397 \times (1.09757)^{\text{Temp}}) \times \text{CT}$ .

(c) Site-specific study. The Executive Secretary may approve alternative chlorine dioxide or ozone CT values to those listed in paragraph (b) above on a site-specific basis. The Executive Secretary must base this approval on a site-specific study a system conducts that follows a protocol approved by the Executive Secretary.

(d) Ultraviolet light. Systems receive Cryptosporidium, Giardia lamblia, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in paragraph (d)(i) of this section. Systems must validate and monitor UV reactors as described in paragraph (d)(ii) and (iii) of this section to demonstrate that they are achieving a particular UV dose value for treatment credit.

(i) UV dose table. The treatment credits listed in Table 215-5 are for UV light at a wavelength of 254 nm as produced

by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing, as described in paragraph (d)(ii). The UV dose values in Table 215-5 are applicable only to post-filter applications of UV in filtered systems.

TABLE 215-5  
UV Dose Table for Cryptosporidium,  
Giardia lamblia, and Virus Inactivation Credit

Log credit	Cryptosporidium UV dose (mJ/cm <sup>2</sup> )	Giardia lamblia UV dose (mJ/cm <sup>2</sup> )	Virus UV dose (mJ/cm <sup>2</sup> )
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

(ii) Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in paragraph (d)(i) of this section (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

(A) When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

(B) Validation testing must include the following: Full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(C) The Executive Secretary may approve an alternative approach to validation testing.

(iii) Reactor monitoring.

(A) Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under paragraph (d)(ii) of this section. This monitoring must include UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters the Executive Secretary designates based on UV reactor operation. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol the Executive Secretary approves.

(B) To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in paragraphs (d)(i) and (ii) of this section. Systems must demonstrate compliance with this condition by the monitoring required under paragraph (d)(iii)(A) of this section.

(20) Reporting requirements.

(a) Systems must report sampling schedules under R309-215-15(3) and source water monitoring results under R309-215-15(7) unless they notify the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d).

(b) Filtered systems must report their Cryptosporidium bin classification as described in R309-215-15(11).

(c) Systems must report disinfection profiles and benchmarks to the Executive Secretary as described in R309-215-15(9) through R309-215-15(10) prior to making a significant change in disinfection practice.

(d) Systems must report to the Executive Secretary in accordance with the following information on the following schedule for any microbial toolbox options used to comply with treatment requirements under R309-215-15(12). Alternatively, the Executive Secretary may approve a system to certify operation within required parameters for treatment credit rather than reporting monthly operational data for toolbox options.

(i) Watershed control program (WCP).

(A) Notice of intention to develop a new or continue an existing watershed control program no later than two years before the applicable treatment compliance date in R309-215-15(13).

(B) Watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13).

(C) Annual watershed control program status report every 12 months, beginning one year after the applicable treatment compliance date in R309-215-15(13).

(D) Watershed sanitary survey report:

(I) For community water systems, every three years beginning three years after the applicable treatment compliance date in R309-215-15(13).

(II) For noncommunity water systems, every five years beginning five years after the applicable treatment compliance date in R309-215-15(13).

(ii) Alternative source/intake management:

(A) Verification that system has relocated the intake or adopted the intake withdrawal procedure reflected in monitoring results No later than the applicable treatment compliance date in R309-215-15(13).

(iii) Presedimentation: Monthly verification of the following:

(A) Continuous basin operation

(B) Treatment of 100% of the flow

(C) Continuous addition of a coagulant

(D) At least 0.5-log mean reduction of influent turbidity or compliance with alternative Executive Secretary-approved performance criteria.

(E) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(iv) Two-stage lime softening: Monthly verification of the following:

(A) Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration.

(B) Both stages treated 100% of the plant flow.

(C) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(v) Bank filtration:

(A) Initial demonstration of the following no later than the applicable treatment compliance date in R309-215-15(13).

(I) Unconsolidated, predominantly sandy aquifer

(II) Setback distance of at least 25 ft. (0.5-log credit) or 50 ft. (1.0-log credit).

(B) If monthly average of daily max turbidity is greater than 1 NTU then system must report result and submit an assessment of the cause. The report is due within 30 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(vi) Combined filter performance:

(A) Monthly verification of combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4 hour CFE measurements taken each month.

(B) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(vii) Individual filter performance. Monthly verification

of the following:

(A) Individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter.

(B) No individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.

(C) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(viii) Demonstration of performance.

(A) Results from testing following a Executive Secretary approved protocol no later than the applicable treatment compliance date in R309-215-15(13).

(B) As required by the Executive Secretary, monthly verification of operation within conditions of Executive Secretary approval for demonstration of performance credit within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(ix) Bag filters and cartridge filters.

(A) Demonstration that the following criteria are met no later than the applicable treatment compliance date in R309-215-15(13).

(I) Process meets the definition of bag or cartridge filtration;

(II) Removal efficiency established through challenge testing that meets criteria in this subpart.

(B) Monthly verification that 100% of plant flow was filtered within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(x) Membrane filtration.

(A) Results of verification testing demonstrating the following no later than the applicable treatment compliance date in R309-215-15(13).

(I) Removal efficiency established through challenge testing that meets criteria in this subpart;

(II) Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline.

(B) Monthly report summarizing the following within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(I) All direct integrity tests above the control limit;

(II) If applicable, any turbidity or alternative Executive Secretary-approved indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken.

(xi) Second stage filtration: Monthly verification that 100% of flow was filtered through both stages and that first stage was preceded by coagulation step within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xii) Slow sand filtration (as secondary filter): Monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100% of flow from surface water sources within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xiii) Chlorine dioxide: Summary of CT values for each day as described in R309-215-15(19) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xiv) Ozone: Summary of CT values for each day as described in R309-215-15(19) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xv) UV:

(A) Validation test results demonstrating operating conditions that achieve required UV dose no later than the applicable treatment compliance date in R309-215-15(13).

(B) Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in R309-215-15(19) (d) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(21) Recordkeeping requirements.

(a) Systems must keep results from the initial round of source water monitoring under R309-215-15(2)(a) and the second round of source water monitoring under R309-215-15(2)(b) until 3 years after bin classification under R309-215-15(11) for filtered systems for the particular round of monitoring.

(b) Systems must keep any notification to the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d) for 3 years.

(c) Systems must keep the results of treatment monitoring associated with microbial toolbox options under R309-215-15(15) through R309-215-15(19) for 3 years.

(22) Requirements for Sanitary Surveys Performed by EPA. Requirements to respond to significant deficiencies identified in sanitary surveys performed by EPA.

(a) A sanitary survey is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS to evaluate the adequacy of the PWS, its sources and operations, and the distribution of safe drinking water.

(b) For the purposes of this section, a significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

(c) For sanitary surveys performed by EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(d) Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system.

#### **R309-215-16. Groundwater Rule.**

(1) Applicability: This subpart applies to all public water systems that use ground water except that it does not apply to public water systems that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment. For the purposes of this subpart, "ground water system" is defined as any public water system meeting this applicability Executive Secretary, including consecutive systems receiving finished ground water.

(a) General requirements: Systems subject to this subpart must comply with the following requirements:

(i) Sanitary survey information requirements for all ground water systems as described in R309-100-7.

(ii) Microbial source water monitoring requirements for ground water systems that do not treat all of their ground water to at least 99.99 percent (4-log) treatment of viruses (using inactivation, removal, or an Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer as described in R309-215-16(2).

(iii) Treatment technique requirements, described in R309-215-16(3), that apply to ground water systems that have fecally contaminated source waters, as determined by source water monitoring conducted under R309-215-16(2), or that have significant deficiencies that are identified by the Executive Secretary or that are identified by EPA under SDWA section 1445. A ground water system with fecally contaminated source water or with significant deficiencies subject to the treatment technique requirements of this subpart must implement one or more of the following corrective action options: correct all significant deficiencies; provide an alternate source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer.

(b) Ground water systems that provide at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer are required to conduct compliance monitoring to demonstrate treatment effectiveness, as described in R309-215-16(3)(b).

(c) If requested by the Executive Secretary, ground water systems must provide the Executive Secretary with any existing information that will enable the Executive Secretary to perform a hydrogeologic sensitivity assessment. For the purposes of this subpart, "hydrogeologic sensitivity assessment" is a determination of whether ground water systems obtain water from hydrogeologically sensitive settings.

(d) Compliance date: Ground water systems must comply, unless otherwise noted, with the requirements of this subpart beginning December 1, 2009.

(2) Ground water source microbial monitoring and analytical methods.

(a) Triggered source water monitoring.

(i) General requirements. A ground water system must conduct triggered source water monitoring if the conditions identified in paragraphs (a)(i)(A) and (a)(i)(B) of this section exist.

(A) The system does not provide at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; and

(B) The system is notified that a sample collected under R309-210-5(1) is total coliform-positive and the sample is not invalidated under R309-210-5(4).

(ii) Sampling Requirements. A ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under R309-210-5(1), except as provided in paragraph (a)(ii)(B) of this section.

(A) The Executive Secretary may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Executive Secretary must specify how much time the system has to collect the sample.

(B) If approved by the Executive Secretary, systems with more than one ground water source may meet the requirements of this paragraph (a)(ii) by sampling a representative ground water source or sources. Systems must submit for Executive Secretary approval a triggered source water monitoring plan that identifies one or more ground water sources that are representative of each monitoring site in the system's sample site plan under R309-210-5(1)(d) and that the system intends to use for representative sampling under this paragraph.

(C) A ground water system serving 1,000 people or fewer

may use a repeat sample collected from a ground water source to meet both the requirements of R309-210-5(2)(a) and to satisfy the monitoring requirements of paragraph (a)(ii) of this section for that ground water source only if the Executive Secretary approves the use of E. coli as a fecal indicator for source water monitoring under this paragraph (a). If the repeat sample collected from the ground water source is E.coli positive, the system must comply with paragraph (a)(iii) of this section.

(iii) Additional Requirements. If the Executive Secretary does not require corrective action under R309-215-16(3)(a)(ii) for a fecal indicator-positive source water sample collected under paragraph (a)(ii) of this section that is not invalidated under paragraph (d) of this section, the system must collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

(iv) Consecutive and Wholesale Systems.

(A) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample collected under R309-210-5(1) must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample.

(B) In addition to the other requirements of this paragraph (a), a wholesale ground water system must comply with paragraphs (a)(iv)(B)(I) and (a)(iv)(B)(II) of this section.

(I) A wholesale ground water system that receives notice from a consecutive system it serves that a sample collected under R309-210-5(1) is total coliform-positive must, within 24 hours of being notified, collect a sample from its ground water source(s) under paragraph (a)(ii) of this section and analyze it for a fecal indicator under paragraph (c) of this section.

(II) If the sample collected under paragraph (a)(iv)(B)(I) of this section is fecal indicator-positive, the wholesale ground water system must notify all consecutive systems served by that ground water source of the fecal indicator source water positive within 24 hours of being notified of the ground water source sample monitoring result and must meet the requirements of paragraph (a)(iii) of this section.

(v) Exceptions to the Triggered Source Water Monitoring Requirements. A ground water system is not required to comply with the source water monitoring requirements of paragraph (a) of this section if either of the following conditions exists:

(A) The Executive Secretary determines, and documents in writing, that the total coliform-positive sample collected under R309-210-5(1) is caused by a distribution system deficiency; or

(B) The total coliform-positive sample collected under R309-210-5(1) is collected at a location that meets Executive Secretary criteria for distribution system conditions that will cause total coliform-positive samples.

(b) Assessment Source Water Monitoring. If directed by the Executive Secretary, ground water systems must conduct assessment source water monitoring that meets Executive Secretary-determined requirements for such monitoring. A ground water system conducting assessment source water monitoring may use a triggered source water sample collected under paragraph (a)(ii) of this section to meet the requirements of paragraph (b) of this section. Executive Secretary-determined assessment source water monitoring requirements may include:

(i) collection of a total of 12 ground water source samples that represent each month the system provides ground water to the public,

(ii) collection of samples from each well unless the system obtains written Executive Secretary approval to conduct monitoring at one or more wells within the ground water system that are representative of multiple wells used by that system and that draw water from the same hydrogeologic setting,

(iii) collection of a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used,

(iv) analysis of all ground water source samples using one of the analytical methods listed in the in paragraph (c)(ii) of this section for the presence of *E. coli*, enterococci, or coliphage,

(v) collection of ground water source samples at a location prior to any treatment of the ground water source unless the Executive Secretary approves a sampling location after treatment, and

(vi) collection of ground water source samples at the well itself unless the system's configuration does not allow for sampling at the well itself and the Executive Secretary approves an alternate sampling location that is representative of the water quality of that well.

(c) Invalidation of a fecal indicator-positive ground water source sample.

(i) A ground water system may obtain Executive Secretary invalidation of a fecal indicator-positive ground water source sample collected under paragraph (a) of this section only under the conditions specified in paragraphs (c)(i)(A) and (B) of this section.

(A) The system provides the Executive Secretary with written notice from the laboratory that improper sample analysis occurred; or

(B) The Executive Secretary determines and documents in writing that there is substantial evidence that a fecal indicator-positive ground water source sample is not related to source water quality.

(ii) If the Executive Secretary invalidates a fecal indicator-positive ground water source sample, the ground water system must collect another source water sample under paragraph (a) of this section within 24 hours of being notified by the Executive Secretary of its invalidation decision and have it analyzed for the same fecal indicator using the analytical methods in paragraph (c) of this section. The Executive Secretary may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Executive Secretary must specify how much time the system has to collect the sample.

(d) Sampling location.

(i) Any ground water source sample required under paragraph (a) of this section must be collected at a location prior to any treatment of the ground water source unless the Executive Secretary approves a sampling location after treatment.

(ii) If the system's configuration does not allow for sampling at the well itself, the system may collect a sample at a Executive Secretary-approved location to meet the requirements of paragraph (a) of this section if the sample is representative of the water quality of that well.

(e) New Sources. If directed by the Executive Secretary, a ground water system that places a new ground water source into service after November 30, 2009, must conduct assessment source water monitoring under paragraph (b) of this section. If directed by the Executive Secretary, the system must begin monitoring before the ground water source is used to provide water to the public.

(f) Public Notification. A ground water system with a ground water source sample collected under paragraph (a) or (b) of this section that is fecal indicator-positive and that is not invalidated under paragraph (d) of this section, including consecutive systems served by the ground water source, must conduct public notification under R309-220-5.

(g) Monitoring Violations. Failure to meet the requirements of paragraphs (a)-(f) of this section is a monitoring violation and requires the ground water system to provide public notification under R309-220-7.

(3) Treatment technique requirements for ground water systems.

(a) Ground water systems with significant deficiencies or source water fecal contamination.

(i) The treatment technique requirements of this section must be met by ground water systems when a significant deficiency is identified or when a ground water source sample collected under R309-215-16(2)(a)(iii) is fecal indicator-positive.

(ii) If directed by the Executive Secretary, a ground water system with a ground water source sample collected under R309-215-16(2)(a)(ii), R309-215-16(2)(a)(iv), or R309-215-16(2)(b) that is fecal indicator-positive must comply with the treatment technique requirements of this section.

(iii) When a significant deficiency is identified at a public water system that uses both ground water and surface water or ground water under the direct influence of surface water, the system must comply with provisions of this paragraph except in cases where the Executive Secretary determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or ground water under the direct influence of surface water.

(iv) Unless the Executive Secretary directs the ground water system to implement a specific corrective action, the ground water system must consult with the Executive Secretary regarding the appropriate corrective action within 30 days of receiving written notice from the Executive Secretary of a significant deficiency, written notice from a laboratory that a ground water source sample collected under R309-215-16(2)(a)(iii) was found to be fecal indicator-positive, or direction from the Executive Secretary that a fecal indicator-positive collected under R309-215-16(2)(a)(ii), R309-215-16(2)(a)(iv), or R309-215-16(2)(b) requires corrective action. For the purposes of this subpart, significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the Executive Secretary determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(v) Within 120 days (or earlier if directed by the Executive Secretary) of receiving written notification from the Executive Secretary of a significant deficiency, written notice from a laboratory that a ground water source sample collected under R309-215-16(2)(a)(iii) was found to be fecal indicator-positive, or direction from the Executive Secretary that a fecal indicator-positive sample collected under R309-215-16(2)(a)(ii), R309-215-16(2)(a)(iv), or R309-215-16(2)(b) requires corrective action, the ground water system must either:

(A) have completed corrective action in accordance with applicable Executive Secretary plan review processes or other Executive Secretary guidance or direction, if any, including Executive Secretary-specified interim measures; or

(B) be in compliance with a Executive Secretary-approved corrective action plan and schedule subject to the conditions specified in paragraphs (a)(v)(B)(I) and (a)(v)(B)(II) of this section.

(I) Any subsequent modifications to a Executive Secretary-approved corrective action plan and schedule must also be approved by the Executive Secretary.

(II) If the Executive Secretary specifies interim measures for protection of the public health pending Executive Secretary approval of the corrective action plan and schedule or pending completion of the corrective action plan, the system must comply with these interim measures as well as with any schedule specified by the Executive Secretary.

(vi) Corrective Action Alternatives. Ground water systems that meet the conditions of paragraph (a)(i) or (a)(ii) of this section must implement one or more of the following

corrective action alternatives:

- (A) correct all significant deficiencies;
- (B) provide an alternate source of water;
- (C) eliminate the source of contamination; or
- (D) provide treatment that reliably achieves at least 4-log

treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(vii) Special notice to the public of significant deficiencies or source water fecal contamination.

(A) In addition to the applicable public notification requirements of R309-220-5, a community ground water system that receives notice from the Executive Secretary of a significant deficiency or notification of a fecal indicator-positive ground water source sample that is not invalidated by the Executive Secretary under R309-215-16(2)(d) must inform the public served by the water system under R309-225-5(8) of the fecal indicator-positive source sample or of any significant deficiency that has not been corrected. The system must continue to inform the public annually until the significant deficiency is corrected or the fecal contamination in the ground water source is determined by the Executive Secretary to be corrected under paragraph (a)(v) of this section.

(B) In addition to the applicable public notification requirements of R309-220-5, a non-community ground water system that receives notice from the Executive Secretary of a significant deficiency must inform the public served by the water system in a manner approved by the Executive Secretary of any significant deficiency that has not been corrected within 12 months of being notified by the Executive Secretary, or earlier if directed by the Executive Secretary. The system must continue to inform the public annually until the significant deficiency is corrected. The information must include:

(I) The nature of the significant deficiency and the date the significant deficiency was identified by the Executive Secretary;

(II) The Executive Secretary-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed; and

(III) For systems with a large proportion of non-English speaking consumers, as determined by the Executive Secretary, information in the appropriate language(s) regarding the importance of the notice or a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(C) If directed by the Executive Secretary, a non-community water system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction under paragraph (a)(vii)(B) of this section.

(b) Compliance monitoring.

(i) Existing ground water sources. A ground water system that is not required to meet the source water monitoring requirements of this subpart for any ground water source because it provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for any ground water source before December 1, 2009, must notify the Executive Secretary in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the specified ground water source and begin compliance monitoring in accordance with paragraph (b)(iii) of this section by December 1, 2009. Notification to the Executive Secretary must include engineering, operational, or other information that the Executive Secretary requests to evaluate the submission. If the system subsequently

discontinues 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source, the system must conduct ground water source monitoring as required under R309-215-16(2).

(ii) New ground water sources. A ground water system that places a ground water in service after November 30, 2009, that is not required to meet the source water monitoring requirements of this subpart because the system provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source must comply with the requirements of paragraphs (b)(ii)(A), (b)(ii)(B) and (b)(ii)(C) of this section.

(A) The system must notify the Executive Secretary in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source. Notification to the Executive Secretary must include engineering, operational, or other information that the Executive Secretary requests to evaluate the submission.

(B) The system must conduct compliance monitoring as required under R309-215-16(3)(b)(iii) of this subpart within 30 days of placing the source in service.

(C) The system must conduct ground water source monitoring under R309-215-16(2) if the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(iii) Monitoring requirements. A ground water system subject to the requirements of paragraph (b)(i) or (b)(ii) of this section must monitor the effectiveness and reliability of treatment for that ground water source before or at the first customer as follows:

(A) Chemical disinfection.

(I) Ground water systems serving greater than 3,300 people. A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in R444-14-4 at a location approved by the Executive Secretary and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Executive Secretary-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days.

(II) Ground water systems serving 3,300 or fewer people. A ground water system that serves 3,300 or fewer people must monitor the residual disinfectant concentration using analytical methods specified in R444-14-4 at a location approved by the Executive Secretary and record the residual disinfection concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Executive Secretary-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. The ground water system must take a daily grab sample during the hour of peak flow or at another time specified by the Executive Secretary. If any daily grab sample measurement falls below the Executive Secretary-determined residual disinfectant concentration, the ground water system must take follow-up samples every four hours until the residual disinfectant concentration is restored to



the Executive Secretary-determined level. Alternatively, a ground water system that serves 3,300 or fewer people may monitor continuously and meet the requirements of paragraph (b)(iii)(A)(I) of this section.

(B) Membrane filtration. A ground water system that uses membrane filtration to meet the requirements of this subpart must monitor the membrane filtration process in accordance with all Executive Secretary-specified monitoring requirements and must operate the membrane filtration in accordance with all Executive Secretary-specified compliance requirements. A ground water system that uses membrane filtration is in compliance with the requirement to achieve at least 4-log removal of viruses when:

(I) The membrane has an absolute molecular weight cut-off (MWCO), or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least 4-log removal of viruses;

(II) The membrane process is operated in accordance with Executive Secretary-specified compliance requirements; and

(III) The integrity of the membrane is intact.

(C) Alternative treatment. A ground water system that uses a Executive Secretary-approved alternative treatment to meet the requirements of this subpart by providing at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer must:

(I) Monitor the alternative treatment in accordance with all Executive Secretary-specified monitoring requirements; and

(II) Operate the alternative treatment in accordance with all compliance requirements that the Executive Secretary determines to be necessary to achieve at least 4-log treatment of viruses.

(c) Discontinuing treatment. A ground water system may discontinue 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source if the Executive Secretary determines and documents in writing that 4-log treatment of viruses is no longer necessary for that ground water source. A system that discontinues 4-log treatment of viruses is subject to the source water monitoring and analytical methods requirements of R309-215-16(2) of this subpart.

(d) Failure to meet the monitoring requirements of paragraph (b) of this section is a monitoring violation and requires the ground water system to provide public notification under R309-220-7.

(4) Treatment technique violations for ground water systems.

(a) A ground water system with a significant deficiency is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the Executive Secretary) of receiving written notice from the Executive Secretary of the significant deficiency, the system:

(i) Does not complete corrective action in accordance with any applicable Executive Secretary plan review processes or other Executive Secretary guidance and direction, including Executive Secretary specified interim actions and measures, or

(ii) Is not in compliance with a Executive Secretary-approved corrective action plan and schedule.

(b) Unless the Executive Secretary invalidates a fecal indicator-positive ground water source sample under R309-215-16(2)(d), a ground water system is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the Executive Secretary) of meeting the conditions of R309-215-16(3)(a)(i) or R309-215-16(3)(a)(ii), the system:

(i) Does not complete corrective action in accordance with any applicable Executive Secretary plan review processes or other Executive Secretary guidance and direction, including Executive Secretary-specified interim measures, or

(ii) Is not in compliance with a Executive Secretary-approved corrective action plan and schedule.

(c) A ground water system subject to the requirements of R309-215-16(3)(b)(iii) that fails to maintain at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source is in violation of the treatment technique requirement if the failure is not corrected within four hours of determining the system is not maintaining at least 4-log treatment of viruses before or at the first customer.

(d) Ground water system must give public notification under R309-220-6 for the treatment technique violations specified in paragraphs (a), (b) and (c) of this section.

(5) Reporting and recordkeeping for ground water systems.

(a) Reporting. In addition to the requirements of R309-105-16, a ground water system regulated under this subpart must provide the following information to the Executive Secretary:

(i) A ground water system conducting compliance monitoring under R309-215-16(3)(b) must notify the Executive Secretary any time the system fails to meet any Executive Secretary-specified requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. The ground water system must notify the Executive Secretary as soon as possible, but in no case later than the end of the next business day.

(ii) After completing any corrective action under R309-215-16(3)(a), a ground water system must notify the Executive Secretary within 30 days of completion of the corrective action.

(iii) If a ground water system subject to the requirements of R309-215-16(2)(a) does not conduct source water monitoring under R309-215-16(2)(a)(v)(B), the system must provide documentation to the Executive Secretary within 30 days of the total coliform positive sample that it met the Executive Secretary criteria.

(b) Recordkeeping. In addition to the requirements of R309-105-17, a ground water system regulated under this subpart must maintain the following information in its records:

(i) Documentation of corrective actions. Documentation shall be kept for a period of not less than ten years.

(ii) Documentation of notice to the public as required under R309-215-16(3)(a)(vii). Documentation shall be kept for a period of not less than three years.

(iii) Records of decisions under R309-215-16(2)(a)(v)(B) and records of invalidation of fecal indicator-positive ground water source samples under R309-215-16(2)(d). Documentation shall be kept for a period of not less than five years.

(iv) For consecutive systems, documentation of notification to the wholesale system(s) of total-coliform positive samples that are not invalidated under R309-210-5(4). Documentation shall be kept for a period of not less than five years.

(v) For systems, including wholesale systems, that are required to perform compliance monitoring under R309-215-16(3)(b):

(A) Records of the Executive Secretary-specified minimum disinfectant residual. Documentation shall be kept for a period of not less than ten years.

(B) Records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the Executive Secretary-prescribed minimum residual disinfectant concentration for a period of more than four hours. Documentation shall be kept for a period of not less

than five years.

(C) Records of Executive Secretary-specified compliance requirements for membrane filtration and of parameters specified by the Executive Secretary for Executive Secretary-approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours. Documentation shall be kept for a period of not less than five years.

**KEY: drinking water, surface water treatment plant monitoring, disinfection monitoring, compliance determinations**

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**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 Special Notice for Repeated Failure to Conduct Monitoring of the Source Water for Cryptosporidium and for Failure to Determine Bin Classification or Mean Cryptosporidium Level.

R309-220-14 Notice by Executive Secretary on behalf of the public water system.

R309-220-15 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 63G-3 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), Interim Enhanced Surface Water Treatment rule (IESWTR) or the Long Term 1 Enhanced Surface Water Treatment rule (LT1ESWTR) 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.

(i) Detection of E. coli, enterococci, or coliphage in source water samples as specified in R309-215-16(2)(a) and R309-215-16(2)(b).

(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.

(d) Failure to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or an Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer under R309-215-16(3)(a).

(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, Interim Enhanced Surface Water Treatment Rule or Filter Backwash Recycling 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, IESWTR or LT1ESWTR 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 3 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. Special Notice for Repeated Failure to Conduct Monitoring of the Source Water for Cryptosporidium and for Failure to Determine Bin Classification or Mean Cryptosporidium Level.**

(1) Applicability of the special notice for repeated failure

to monitor: The owner or operator of a community or non-community water system that is required to monitor source water under R309-215-15(2) must notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in R309-215-15(2)(c). The notice must be repeated as specified in R309-220-6(2).

(2) Applicability of the special notice for failure to determine bin classification: The owner or operator of a community or non-community water system that is required to determine a bin classification under R309-215-15(11) must notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed report the determination as specified in R309-215-15(11)(e). The notice must be repeated as specified in R309-220-6(2). The notice is not required if the system is complying with a Executive Secretary-approved schedule to address the violation.

(3) Required form and manner of the special notice: The form and manner of the public notice must follow the requirements for a Tier 2 public notice prescribed in R309-220-6(3). The public notice must be presented as required in R309-220-8(3).

(4) 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.

(a) The special notice for repeated failure to conduct monitoring must contain the following language: We are required to monitor the source of your drinking water for Cryptosporidium. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant name) is sufficient to adequately remove Cryptosporidium from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We "did not monitor or test" or "did not complete all monitoring or testing on schedule" and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate Cryptosporidium removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(b) The special notice for failure to determine bin classification or mean Cryptosporidium level must contain the following language: We are required to monitor the source of your drinking water for Cryptosporidium in order to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove Cryptosporidium from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(c) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

**R309-220-14. 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.

**R309-220-15. 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 acids (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), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1) and Filter Backwash Recycling Rule (FBRR) 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.

(10) Fecal Indicators. Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these waste can cause short-term health 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.

**Radioactive Contaminants:**

(11) 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.

(12) 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.

(13) 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.

(14) 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:**

(15) 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.

(16) 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.

(17) 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.

(18) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(19) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(20) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(21) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(22) 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.

(23) 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.

(24) 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 fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(25) 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.

(26) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(27) 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.

(28) 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.

(29) 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.

(30) 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:

(31) 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.

(32) 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(33) 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.

(34) 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.

(35) 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.

(36) 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.

(37) 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.

(38) 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.

(39) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(40) 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.

(41) 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.

(42) 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.

(43) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(44) 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.

(45) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(46) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(47) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(48) 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.

(49) 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.

(50) 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.

(51) 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.

(52) 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.

(53) 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.

(54) 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.

(55) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(56) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(57) Oxamyl (Vydate). Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(58) 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.

(59) 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.

(60) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(61) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(62) 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:

(63) 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.

(64) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an

increased risk of getting cancer.

(65) 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.

(66) 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.

(67) 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.

(68) 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.

(69) 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.

(70) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(71) 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.

(72) 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.

(73) 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.

(74) 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.

(75) 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.

(76) trans-1,2-Dichloroethylene. 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.

(77) 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.

(78) 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.

(79) 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.

(80) Haloacetic Acids (HAA). Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

(81) 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.

(82) 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.

(83) 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.

(84) 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.

(85) 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.

(86) 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.

(87) 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.

(88) 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.

(89) 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.

(90) 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**

**September 24, 2009**

**19-4-104**

**Notice of Continuation March 22, 2010**

**63G-4-202**

**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 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 63G-3 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 R444-14-4(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: Executive Secretary 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. For the MCLs for TTHM and HAA5 in R309-200-5(3)(c)(vi), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM and HAA5 MCL, the system must include the locational running annual averages for all locations that exceed 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 monitoring locations: the average and range of detection expressed in the same units as the MCL. The system is required to include individual sample results for the IDSE conducted under R309-210-9 when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(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 R309-215-9: the highest average monthly value.

(B) When it is reported pursuant to R309-215-9: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in R309-200-5(5)(a) and (b) 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.

(f) Systems required to comply with R309-215-16.

(i) Any ground water system that receives notice from the Executive Secretary of a significant deficiency or notice from a laboratory of a fecal indicator-positive ground water source sample that is not invalidated by the Executive Secretary under R309-215-16(2)(d) must inform its customers of any significant deficiency that is uncorrected at the time of the next report or of any fecal indicator-positive ground water source sample in the next report. The system must continue to inform the public annually until the Executive Secretary determines that particular significant deficiency is corrected or the fecal contamination in the ground water source is addressed under R309-215-16(3)(a). Each report must include the following elements.

(A) The nature of the particular significant deficiency or the source of the fecal contamination (if the source is known) and the date the significant deficiency was identified by the Executive Secretary or the dates of the fecal indicator-positive ground water source samples;

(B) If the fecal contamination in the ground water source has been addressed under R309-215-16(3)(a) and the date of such action;

(C) For each significant deficiency or fecal contamination in the ground water source that has not been addressed under R309-215-16(3)(a), the Executive Secretary-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) If the system receives notice of a fecal indicator-positive ground water source sample that is not invalidated by the Executive Secretary under R309-215-16(2)(d), the potential health effects using the health effects language of Appendix A of subpart O.

(ii) If directed by the Executive Secretary, a system with significant deficiencies that have been corrected before the next report is issued must inform its customers of the significant deficiency, how the deficiency was corrected, and the date of

correction under paragraph (8)(f)(i) of this section.

**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) Every report must include the following lead-specific information:

(a) A short informational statement about lead in drinking water and its effects on children. The statement must include the following information:

If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. {NAME OF UTILITY} is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at <http://www.epa.gov/safewater/lead>.

(b) A system 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) Fecal Indicators (enterococci or coliphage) - Human

and animal fecal waste.

- (4) Turbidity- Soil runoff.
- (5) Total organic carbon - Naturally present in the environment.
- Radioactive Contaminants
- (6) Alpha emitters (pCi/l) - Erosion of natural deposits.
- (7) Beta/photon emitters (mrem/yr) - Decay of natural and man-made deposits.
- (8) Combined radium (pCi/l) - Erosion of natural deposits.
- (9) Uranium (ug/l) - Erosion of natural deposits.
- Inorganic Contaminants
- (10) Antimony (ppb) - Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
- (11) Arsenic (ppb) - Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.
- (12) Asbestos (MFL) - Decay of asbestos cement water mains; Erosion of natural deposits.
- (13) Barium (ppm) - Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.
- (14) Beryllium (ppb) - Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries.
- (15) Cadmium (ppb) - Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; runoff from waste batteries and paints.
- (16) Chromium (ppb) - Discharge from steel and pulp mills; Erosion of natural deposits.
- (17) Copper (ppm) - Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives.
- (18) Cyanide (ppb) - Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.
- (19) Fluoride (ppm) - Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories.
- (20) Lead (ppb) - Corrosion of household plumbing systems; Erosion of natural deposits.
- (21) Mercury (inorganic) (ppb) - Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.
- (22) Nitrate (as Nitrogen) (ppm) - Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
- (23) Nitrite (as Nitrogen) (ppm) - Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
- (24) Selenium (ppb) - Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.
- (25) Thallium (ppb) - Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories. Synthetic Organic Contaminants including Pesticides and Herbicides
- (26) 2,4-D (ppb) - Runoff from herbicide used on row crops.
- (27) 2,4,5-TP (Silvex)(ppb) - Residue of banned herbicide.
- (28) Acrylamide - Added to water during sewage/wastewater treatment.
- (29) Alachlor (ppb) - Runoff from herbicide used on row crops.
- (30) Atrazine (ppb) - Runoff from herbicide used on row crops.
- (31) Benzo(a)pyrene (PAH) (nanograms/l) - Leaching from linings of water storage tanks and distribution lines.
- (32) Carbofuran (ppb) - Leaching of soil fumigant used on rice and alfalfa.
- (33) Chlordane (ppb) - Residue of banned termiticide.
- (34) Dalapon (ppb) - Runoff from herbicide used on rights of way.
- (35) Di(2-ethylhexyl) adipate (ppb) - Discharge from

chemical factories.

- (36) Di(2-ethylhexyl) phthalate (ppb) - Discharge from rubber and chemical factories.
- (37) Dibromochloropropane (ppt) - Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
- (38) Dinoseb (ppb) - Runoff from herbicide used on soybeans and vegetables.
- (39) Diquat (ppb) - Runoff from herbicide use.
- (40) Dioxin (2,3,7,8-TCDD) (ppq) - Emissions from waste incineration and other combustion; Discharge from chemical factories.
- (41) Endothall (ppb) - Runoff from herbicide use.
- (42) Endrin (ppb) - Residue of banned insecticide.
- (43) Epichlorohydrin - Discharge from industrial chemical factories; An impurity of some water treatment chemicals.
- (44) Ethylene dibromide (ppt) - Discharge from petroleum refineries.
- (45) Glyphosate (ppb) - Runoff from herbicide use.
- (46) Heptachlor (ppt) - Residue of banned pesticide.
- (47) Heptachlor epoxide (ppt) - Breakdown of heptachlor.
- (48) Hexachlorobenzene (ppb) - Discharge from metal refineries and agricultural chemical factories.
- (49) Hexachlorocyclopentadiene (ppb) - Discharge from chemical factories.
- (50) Lindane (ppt) - Runoff/leaching from insecticide used on cattle, lumber, gardens.
- (51) Methoxychlor (ppb) - Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
- (52) Oxamyl (Vydate)(ppb) - Runoff/leaching from insecticide used on apples, potatoes and tomatoes.
- (53) PCBs (Polychlorinated biphenyls) (ppt) - Runoff from landfills; Discharge of waste chemicals.
- (54) Pentachlorophenol (ppb) - Discharge from wood preserving factories.
- (55) Picloram (ppb) - Herbicide runoff.
- (56) Simazine (ppb) - Herbicide runoff.
- (57) Toxaphene (ppb) - Runoff/leaching from insecticide used on cotton and cattle. Volatile Organic Contaminants
- (58) Benzene (ppb) - Discharge from factories; Leaching from gas storage tanks and landfills.
- (59) Bromate (ppb) - By-product of drinking water chlorination.
- (60) Carbon tetrachloride (ppb) - Discharge from chemical plants and other industrial activities.
- (61) Chloramines (ppm) - Water additive used to control microbes.
- (62) Chlorine (ppm) - Water additive used to control microbes.
- (63) Chlorite (ppm) - By-product of drinking water chlorination.
- (64) Chlorine dioxide (ppb) - Water additive used to control microbes.
- (65) Chlorobenzene (ppb) - Discharge from chemical and agricultural chemical factories.
- (66) o-Dichlorobenzene (ppb) - Discharge from industrial chemical factories.
- (67) p-Dichlorobenzene (ppb) - Discharge from industrial chemical factories.
- (68) 1,2-Dichloroethane (ppb) - Discharge from industrial chemical factories.
- (69) 1,1-Dichloroethylene (ppb) - Discharge from industrial chemical factories.
- (70) cis-1,2-Dichloroethylene (ppb) - Discharge from industrial chemical factories.
- (71) trans-1,2-Dichloroethylene (ppb) - Discharge from industrial chemical factories.
- (72) Dichloromethane (ppb) - Discharge from pharmaceutical and chemical factories.

(73) 1,2-Dichloropropane (ppb) - Discharge from industrial chemical factories.

(74) Ethylbenzene (ppb) - Discharge from petroleum refineries.

(75) Haloacetic Acids (HAA) (ppb) - By-product of drinking water disinfection.

(76) Styrene (ppb)- Discharge from rubber and plastic factories; Leaching from landfills.

(77) Tetrachloroethylene (ppb) - Discharge from factories and dry cleaners.

(78) 1,2,4-Trichlorobenzene (ppb) - Discharge from textile-finishing factories.

(79) 1,1,1-Trichloroethane (ppb) - Discharge from metal degreasing sites and other factories.

(80) 1,1,2-Trichloroethane (ppb) - Discharge from industrial chemical factories.

(81) Trichloroethylene (ppb) - Discharge from metal degreasing sites and other factories.

(82) TTHMs (Total trihalomethanes)(ppb) - By-product of drinking water chlorination.

(83) Toluene (ppm) - Discharge from petroleum factories.

(84) Vinyl Chloride (ppb) - Leaching from PVC piping; Discharge from plastics factories.

(85) Xylenes (ppm) - Discharge from petroleum factories; Discharge from chemical factories.

**KEY: drinking water, consumer confidence report, water quality**

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**19-4-104**

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**R309. Environmental Quality, Drinking Water.****R309-300. Certification Rules for Water Supply Operators.****R309-300-1. Objectives.**

These certification rules are established to promote use of trained, experienced, and efficient personnel in charge of public waterworks and to establish standards whereby operating personnel can demonstrate competency to protect the public health through proficient operation of waterworks facilities.

**R309-300-2. Authority.**

Utah's Operator Certification Program is authorized by Section 19-4-104.

**R309-300-3. Extent of Coverage - To Whom Rules Apply - Effective Date.**

These rules shall apply to all community and non-transient non-community drinking water systems and all public drinking water systems that utilize treatment of the drinking water. This shall include both water treatment and distribution systems.

The certification requirements shall become effective February 1, 2001 for non-transient non-community drinking water systems and for community water systems serving less than 800 population utilizing only ground water or wholesale sources. These water systems shall have until February 1, 2003 to meet these requirements. For further information on this program, contact the Division of Drinking Water, telephone 536-4200.

**R309-300-4. Definitions.**

"Board" see the definition of: Drinking Water Board below.

"Commission" see the definition of: Operator Certification Commission.

"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.

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

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

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

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

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

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

"Division of Drinking Water" means the Division within the Utah Department of Environmental Quality which regulates public water supplies.

"Drinking Water Board" means the board appointed by the Governor responsible for promulgation, interpretation and enforcement of Drinking Water Rules in Utah.

"Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf. The Executive Secretary has been delegated the responsibility of conducting the necessary daily duties of the Board.

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

"Grandparent Certificate" means the operator has not been issued an Operator Certificate through the examination process and that a restricted certificate has been issued to the operator which is limited to his current position and system. These certificates cannot be used with any other system should the operator transfer.

"Non-Transient Non-Community Water System" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

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

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

"Operator Certification Commission" means the Commission appointed by the Drinking Water Board as an advisory Commission on certification.

"Public Drinking Water System" means any drinking water system, either publicly or privately owned, that has at least 15 connections or serves at least 25 people for at least 60 days a year.

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

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

"Secretary" means the Secretary to the Operator Certification Commission. This is an individual appointed by the Executive Secretary to conduct the business of the Commission.

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

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

"Treatment Plant" means those facilities capable of delivering complete treatment to any water (the equivalent of coagulation and/or filtration) serving a public drinking water supply.

"Unrestricted Certificate" means that a certificate of competency has been issued by the Board on the recommendation of the Commission. This certificate implies that the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on his certificate.

**R309-300-5. General Policies.**

1. In order to become a certified water operator or specialist, an individual shall pass an examination administered by the Division of Drinking Water or qualify for the grandparent provisions outlined in R309-300-13.

2. Any properly qualified operator (see Minimum Required Qualifications for Utah Waterworks Operators Table 5) may apply for unrestricted certification.

3. Any properly qualified person (see Minimum Required Qualifications for Water System Specialists Table 6) may apply for Specialist certification. A Specialist, regardless of discipline or grade, shall not act as a direct responsible charge operator, or be in direct operation or supervise the direct operation of, any public drinking water system.

4. An individual who holds a current Specialist Certificate may apply for an Operator Certificate of the same discipline and grade upon verification of direct employment with a public drinking water system. An individual who holds a current Operator Certificate (Restricted and Unrestricted) may apply for a Specialist Certificate of the same discipline and grade if that operator leaves the direct employment of a drinking water system.

5. All direct responsible charge operators shall be certified at a minimum of the grade level of the water system with an appropriate certificate. Where 24-hour shift operation is used or required, one operator per shift must be certified at the classification of the system operated.

6. The Board, upon recommendation from the Commission, may waive examination of applicants holding a valid certificate or license issued in compliance with other state certification plans having equivalent standards, and grant reciprocity.

7. A grandparent certificate will require normal renewal as with other certificates and will be restricted to the existing position, person, and system for which it was issued. No further examination will be required unless the grade of the drinking water system increases or the operator seeks to change the certificate discipline or grade. At that time, all normal certification requirements must be met.

8. Every community and non-transient non-community drinking water system and all public systems that utilize treatment of the drinking water shall have at least one operator certified at the classified grade of the water system. The certification requirements for non-transient non-community drinking water systems and for community water systems serving less than 800 population, serving only ground water, shall be met by February 1, 2003. Certification must be appropriate for the type of system operated (treatment and/or distribution).

9. An individual who is issued an Operator Certificate shall be employed by, or an appointed volunteer for, a public drinking water supply located in Utah.

10. If the Distribution or Treatment Plant Manager is changed or leaves a particular water system, the water system management must notify the Secretary to the Operator Certification Commission within ten days by contacting the Division of Drinking Water in writing. Within one year, or four examination cycles, whichever is longer, the operator in the position of plant or system manager that requires certification must have passed an examination of the appropriate grade and discipline. Direct responsible charge experience may be gained later, together with unrestricted certification as experience is gained.

11. The Secretary to the Commission may suspend or revoke a certificate after due notice and opportunity for a hearing. See Section R309-300-9 for further details.

12. An operator may have the opportunity to take any grade of examination higher than the rating of the system which he operates. If passed, the operator shall be issued a restricted certificate at that higher grade. This certificate can be used to demonstrate that the operator has successfully passed all knowledge requirements for that discipline and grade, but that experience is lacking. This restricted certificate will become unrestricted when the experience requirements are met with

written verification for the appropriate discipline and grade, provided it is renewed at the required intervals.

13. The Commission will review on a periodic basis each system's compliance with these rules and will refer those systems in violation to the Board for appropriate action. Any requirement can be appealed to the Board where unusual conditions warrant an exemption. Formal action in these areas will be taken on each case. The Commission will work closely with water system managements to ensure that efforts are underway to meet the requirements of these rules.

14. An operator who is acting as the direct responsible charge operator for more than one drinking water system (regional operator) shall not be a grandparent certified operator.

15. The regional operator must have an unrestricted certificate equal to or higher than the grade and discipline of the rating applied to each system he is operating.

16. If the regional operator is operating any system(s) that have both disciplines involved in their rating, the operator must have unrestricted certificates in both disciplines and at the highest grade of the most complex system he is working with.

17. A regional operator shall be within a one hour travel time, under normal work and home conditions, of each drinking water system for which he is considered in direct responsible charge unless a longer travel time is approved by the Operator Certification Commission based on availability of certified operators and the distance between community water systems in the area.

18. If the drinking water system has only one certified operator, with the exception of a drinking water system employing a regional operator, the operator must have a back up operator certified in the required discipline(s) and not more than one grade lower than the drinking water system's grade. The back up certified operator must be within one hour travel time of the drinking water system.

19. At no time will an uncertified operator be allowed to operate a drinking water system covered by these rules.

#### **R309-300-6. Application for Examination.**

1. Prior to taking an examination, the operator or specialist must file a written application with the Division of Drinking Water, accompanied by evidence of his qualifications for certification in accordance with provisions of this plan (see tables on minimum qualifications). Such applications shall be made on forms supplied by the Division.

2. An operator may elect to challenge any written examination which he believes can be successfully passed. Persons passing such a challenged examination shall be issued restricted certificates for the appropriate discipline and grade.

#### **R309-300-7. Examinations.**

1. The time and place of the examination to qualify for a certificate shall be determined by the Commission. All examinations for certification shall be given not less than twice a year, generally at each of 12 district health department offices. All examinations will be conducted on the same day, graded, and the applicant notified of the results within 30 days. If an operator taking the examination fails to pass, he may file an application for reexamination at the next available date.

2. The minimum passing grade for all certification exams shall be 70 percent correct on all questions asked.

3. An individual who has failed to pass at least two consecutive written exams, at the same grade level and discipline, may appeal the results by making an application for an oral exam. The oral exam will be administered by at least two Commission members. If the individual fails this exam, he will be given written notice of those areas deficient and asked to reapply for a written examination.

4. Examinations will be given in nine grades, four in water treatment and five water distribution. The examinations will

cover, but not be limited to, the following areas:

- (a) general water supply knowledge;
  - (b) control processes in water treatment or distribution;
  - (c) operation, maintenance, and emergency procedures in treatment or distribution;
  - (d) proper record keeping;
  - (e) laws and requirements, and water quality standards.
5. The written examination for specialist certification will be the same examination that is given for operator certification.
6. The written examination question bank and text matrix shall be reviewed periodically by the Commission.

#### **R309-300-8. Certificates.**

1. All certificates shall indicate the discipline for which they were issued as follows:

- (a) Water Treatment Plant Operator, Unrestricted;
- (b) Water Treatment Plant Operator, Restricted;
- (c) Water Distribution Operator, Unrestricted;
- (d) Water Distribution Operator, Restricted;
- (e) Water Treatment Specialist;
- (f) Water Distribution Specialist;
- (g) Small System, Unrestricted;
- (h) Small System, Restricted;
- (i) Grandparent.

2. A restricted certificate will be issued to those operators who have passed a higher grade examination than the grade for which they have qualified in the experience category. Upon accumulating the necessary experience (see R309-300-19, Table 5 and Table 6), these restricted certificates will become unrestricted with the same renewal date. Certificates issued in the restricted status will be stamped with the word RESTRICTED on the bottom left corner of the certificate.

3. Grandparent certificates will be restricted to the person, position, and water system for which they were issued. These certificates will exempt the holder from further examination but will not be transferable to other persons, drinking water systems or positions.

4. A Specialist Certificate will be issued to those persons who have met the experience requirements and have successfully passed the written examination, but who are not in direct employment with a Utah Public Drinking Water System or in the case of requested conversion (see R309-300-8(5)).

5. An individual who currently holds a valid Utah Operator Certificate and who is no longer directly employed by a Utah drinking water system may request his Operator Certificate be converted to a Specialist Certificate with the same expiration date.

6. All certificates shall continue in effect for a period of three years unless suspended or revoked prior to that time. The certificate must be renewed every three years by payment of a renewal fee and evidence of required training (see R309-300-14). Certificates will expire on December 31, three years from the year of issuance.

7. Failure to remain active in the waterworks field during the three-year life of the Operator Certificate can be cause for denial of the application renewal.

8. Requests for renewal shall be made on the forms supplied by the Division of Drinking Water.

9. A lapsed certificate may be renewed within 6 months of the expiration date, by payment of the reinstatement fee or passing an examination. After the first six months from the expiration date, the operator shall have one year to appeal to the Operator Certification Commission for renewal of the certificate. After considering the training, experience, education and progress made since the certificate lapsed, the Commission may grant reinstatement without examination.

#### **R309-300-9. Certificate Suspension and Revocation Procedures.**

1. When the Secretary is considering the suspension or revocation of an Operator's or Specialist's certificate, the individual shall be so informed in writing. The communication shall state the reasons for considering such action and allow the individual an opportunity for a hearing.

2. Grounds for suspending or revoking an Operator's or a Specialist's certificate shall be any of the following:

- (a) demonstrated disregard for the public health and safety;
- (b) misrepresentation or falsification of figures and reports, or both, submitted to the State;
- (c) cheating on a certification exam.

3. Suspension or revocation will be possible when it can be shown that the circumstances and events were under an Operator's or a Specialist's jurisdiction and control. Disasters or "acts of God" which could not be reasonably anticipated will not be grounds for a suspension or a revocation action.

4. Following an appropriate hearing on these matters, the Commission will take formal action. This action shall include a description of the findings of fact to be placed in the Operator's or the Specialist's certification file and mailed to the Operator or the Specialist involved. This communication shall also state the lengths of suspension or revocation, and the procedures to reapply for certification at the end of the specified disciplinary period.

5. Any suspension or revocation may be appealed to the Drinking Water Board by filing a request for a hearing with the Executive Secretary. The Executive Secretary shall place this matter on the agenda of the next regular meeting and so inform the appellant. The request for a hearing must be received by the Executive Secretary at least 14 calendar days prior to a scheduled Board meeting in order to be placed on the Board's agenda.

#### **R309-300-10. Fees.**

1. Fees for operator and specialist certification shall be submitted in accordance with Section 63-38-3.
2. Examination fees from applicants who are rejected before examination will be returned to the applicant.
3. Application fees will not be returned.

#### **R309-300-11. Facilities Classification System.**

1. All treatment plants and distribution systems shall be classified in accordance with R309-300-19.
2. Classification will be made by either the point system or on a population-served basis, whichever results in a higher classification.
3. When the classification of a system is upgraded or added to existing system ratings, the Secretary to the Commission will make a decision on the timing to be allowed for operators to gain certification at the higher or different level.

#### **R309-300-12. Qualifications of Operators.**

1. Minimum qualifications are outlined in Minimum Required Qualifications for Utah Waterworks Operators, Table 5, and Minimum Certification Qualifications for Water System Specialists, Table 6, included with these rules (see Section R309-300-19).
2. Approved high school equivalencies can be substituted for the high school graduation requirement.
3. Education of an operator can be substituted for experience, but no more than 50 percent of the experience may be satisfied by education. Note: The exception to this is in grades I and II, where the "one year of experience" requirement cannot be reduced by any amount of education.
4. Education of a specialist cannot be substituted for the required experience (see Minimum Certification Qualifications for Water System Specialists Table 6).

**R309-300-13. Grandparent Certification Criteria.**

1. The owner of a non-transient non-community drinking water system or a community water system serving 800 or less population and which utilizes only groundwater or wholesale sources may apply for Grandparent certification for the operators in direct responsible charge of their water system by February 1, 2003.

2. Applications for grandparent certification shall be made on applications supplied by the Division of Drinking Water. The applications must be received by the Division of Drinking Water no later than the date listed above, thereafter applications for grandparent certifications will not be accepted.

3. Grandparent certificate will be available for community and non-transient non-community water systems that serve a population of 800 or less and to operators who meet the following criteria:

(a) System serving 500 or less population (Small System operator):

(i) The operator shall have at least 3 years experience operating the water system for which grandparent certification is being applied for.

(ii) The operator shall have operated the water system in compliance with the Utah Public Drinking Water Rules (R309-100 through R309-820) for the most recent 3 year time period. Compliance shall mean that the system shall not have at any time exceeded the 75 percent of allowable number of Improvement Priority points allowed for an "Approved" water system in R309-400. For purposes of compliance determination for grandparent certification qualification only, points assessed for capital improvements that exceed a cost of \$1,000 will be excluded from the total.

(b) System serving 501 to 800 population (Distribution I operator):

(i) The operator shall have at least 5 years experience operating the water system for which grandparent certification is being applied for.

(ii) The operator shall have operated the water system in compliance with the Utah Public Drinking Water Rules (R309-100 through R309-820) for the most recent 5 year time period. Compliance shall mean that the system shall not have at any time exceeded the 75 percent of allowable number of Improvement Priority points allowed for an "Approved" water system in R309-400. For purposes of compliance determination for grandparent certification qualification only, points assessed for capital improvements that exceed a cost of \$1,000 will be excluded from the total.

4. If an operator is denied certification through the Grandparent process, the decision may be appealed as outlined in R309-300-9(4) and R309-300-9(5) of these rules.

**R309-300-14. CEUs and Approved Training.**

1. CEUs will be required for renewal of all certificates (grandparent, restricted and unrestricted) according to the following schedule:

TABLE 1

CLASSIFICATION	CEUs REQUIRED IN A 3-YEAR PERIOD
Small System	2
Grade 1	2
Grade 2	2
Grade 3	3
Grade 4	3

2. Grandparent certificates are required to have 2.0 or 3.0 CEUs, as per the water system classification, for certificate renewal. Grandparent certificates issued after the calendar year of 2000 are required to obtain 0.7 CEUs of an approved pre-exam training course as part of the 2.0 CEU renewal requirement. These specific CEUs shall be obtained during the

first renewal cycle of said certificate.

3. Groups that currently sponsor approved education activities in Utah are:

- The Rural Water Association of Utah;
- Salt Lake Community College
- Utah Valley State College;
- Utah State University at Logan;
- Utah Department of Environmental Quality;
- Manufacturer's Representatives;
- American Water Works Association;
- American Backflow Prevention Association.

4. A continuing education unit is defined as 10 contact hours of participation in, and successful completion of, an organized and approved training education experience under qualified instruction.

5. College level education is accepted in drinking water related disciplines upon approval of the Secretary to the Commission as to CEU credits (1 quarter credit hour will equal 1.0 CEU or 1 semester credit hour will equal 1.5 CEUs).

6. All CEUs for certificate renewal shall be subject to review for approval to insure that the training is applicable to waterworks operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Secretary to the Commission. Training records will be maintained by the Division of Drinking Water.

7. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Secretary to the Commission in writing prior to the training.

8. In-house or in-plant training submitted to the Secretary of the Commission must meet the following general criteria to be approved:

(a) Instruction must be under the supervision of an approved instructor.

(b) An outline must be submitted of the subjects to be covered and the time to be allotted to each area.

(c) A list of the teacher's objectives shall be submitted which will document the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

9. One CEU credit will be given for registration and attendance at the annual technical program meeting of the American Water Works Association (AWWA), the Intermountain Section of AWWA, the Rural Water Association of Utah, or the National Rural Water Association.

**R309-300-15. Validation of Previously Issued Certificates.**

1. All current certificates issued by the Executive Secretary will remain in effect until their stated date of expiration and may be renewed at any time before this date in accordance with the rules established herein. Certificates will be issued for a three-year period.

2. Those individuals who were issued Grandparent Certificates and subsequently passed an examination within the same discipline, at the same grade, or a higher grade will be issued a new unrestricted certificate which will nullify the existing "Grandparent" certificate.

**R309-300-16. Operator Certification Commission.**

1. An Operator Certification Commission shall be appointed by the Drinking Water Board from recommendations made by the cooperating agencies. Cooperating agencies are the Utah Department of Environmental Quality, the Utah League of Cities and Towns, the Training Coordinating Committee of Utah, the Intermountain Section of the American Water Works Association, the Civil or Environmental Engineering Departments of Utah's Universities, and the Rural Water Association of Utah.

2. The Commission is charged with the responsibility of

conducting all work necessary to promote the program, recommend certification of operators, and oversee the maintenance of records.

3. The Commission shall consist of seven members as follows:

(a) One member shall be a certified operator from a town having a population under 10,000 and will be nominated by the Rural Water Association of Utah.

(b) One member shall be at least a grade III unrestricted certified distribution operator and will be nominated by the American Water Works Association.

(c) One member shall be at least a grade III unrestricted certified water treatment plant operator and will be nominated by the American Water Works Association.

(d) One member shall represent municipal water supply management and will be nominated by the Utah League of Cities and Towns.

(e) One member shall represent the civil or environmental engineering department of a Utah university cooperating with the certification program.

(f) One member shall represent water supply trainers and will be nominated by the Training Coordinating Committee (TCC).

(g) One member shall be a representative for the Drinking Water Board.

4. Each group represented shall designate its nominee to the Drinking Water Board for a three-year term. Nominations may be accepted or rejected by the Drinking Water Board. Persons may be renominated for successive three-year terms by their sponsor groups. The Executive Secretary for the Drinking Water Board shall notify the sponsoring groups one year in advance of the termination of the Commission member that a nominee will be needed. The initial Commission at its first meeting will draw lots corresponding to one, two, and three-year terms. Thereafter, all Commission member terms will be for three years on a staggered replacement basis. An appointment to succeed a Commission member who is unable to serve his full term shall be only for the remainder of the unexpired term and shall be submitted by the sponsor groups and approved by the Drinking Water Board as mentioned above.

5. Each year the Commission shall elect from its membership a chairperson and vice-chairperson and such other officers as may be needed to conduct its business.

6. It shall be the duty of the Commission to advise in the preparation of examinations for various grades of operators and advise on the certification criteria used by the Secretary. In addition to these duties, the Commission shall also advertise and promote the program, distribute applications and notices, maintain a register of certified Operators and Specialists, set examination dates and locations, and make recommendations regarding each drinking water system's compliance with these rules.

**R309-300-17. Secretary to the Commission.**

The Executive Secretary of the Drinking Water Board shall designate a non-voting member of the Commission to serve as its Secretary, who shall be a senior public health representative from the Division of Drinking Water. This Secretary shall serve to coordinate the paperwork for the Commission and to bring issues before the Commission. His duties consist of the following:

1. acting as liaison between the Commission and the water suppliers, and generally promote the program;
2. maintaining records necessary to implement these rules;
3. classifying all water treatment plants and distribution systems;
4. notifying sponsor groups of Commission nominations needed;
5. coordinating with Utah's Training Coordinating

Committee (TCC) to ensure adequate operator training opportunities throughout the state;

6. serving as a source of public information for operator training opportunities and certified operators available for employment;

7. receiving applications for certification and screen, investigate, verify and evaluate all applications received consistent with policies set by the Board and Commission;

8. bringing issues to the Commission for their review;

9. developing and administering operator certification examinations.

**R309-300-18. Non-compliance with Certification Program.**

1. After appropriate consideration by the Commission, cases of non-compliance will be referred to the Drinking Water Board for appropriate enforcement action.

2. Non-compliance with the certification rules is a violation of R309-102-8. Whenever such a violation occurs, the water system management will be notified in writing by the Division of Drinking Water and will be required to correct the situation.

**R309-300-19. Drinking Water System Classification.**

This system applies only to those public water supplies operating coagulation and/or filtration treatment plants. This classification system does not apply to those systems operating only chlorination facilities on distribution systems.

Size	Item	Points
	Maximum population served, peak day	1 pt. per 5,000 or part thereof
	Design flow (avg. day) or peak month's	1 pt. per MGD or part thereof
Water Supply Source	Groundwater	3
	Surface water	5
	Average raw water quality (0 to 10)	0
	Little or no variation	
	Raw water quality (other than turbidity) varies enough to require treatment changes less than 10% of the time	2
	Raw water quality including turbidity varies often enough to require frequent changes in the treatment process	
	Raw water quality is subject to major changes and may be subject to periodic serious pollution	10
	Aeration for or with CO2	
	pH adjustment	4
	Packed tower aeration	6
	Stability or corrosion control	4
	Taste and odor control	8
	Color control	4
	Treatment	Iron or Iron/Mn, removal
Ion exchange softening		10
Chemical precipitation softening		20
Coagulant addition		4
Flocculation		6
Sedimentation		5
Upflow clarification		14
Filtration		10
Disinfection (0-10)		0
No disinfection		
Chlorination or comparable	5	
On-site generation of disinfectant		
Special processes (including reverse osmosis, electro-dialysis, etc.)	15	

Sludge/backwash water disposal (0-5)			X					1	2
No disposal to raw water source	0	3		X		X		2	4
Any disposal to raw water source	2		X				X	3	6
Any disposal to plant raw water	5	2		X		X		0	2
Laboratory control (0-10)							X	0	2
Biological (0-10)								0	3
All lab work done outside of plant	0		X					0	1
Colilert process	2			X				0	1
Membrane filter	3	1 and				X		0	1
Multiple tube of fecal determination	5	Small System					X	0	1
Biological identification	7								
Viral studies or similarly complex work done on-site	10								
Chemical/physical									
All lab work done outside of plant	0								
Push button or colorimetric methods such as chlorine residual or pH	3								
Additional procedures such as titrations or jar tests	5								
More advanced determinations such as numerous organics	7								
Highly sophisticated instrumentation such as atomic absorption or gas chromatography	10								

Note:  
 (1) Experience requirements apply to all operators except those who have been issued "grandparent" certificates.  
 (2) At least one half of all experience must be gained at the grade of certification desired.

TABLE 6  
 Minimum Certification Qualifications  
 For Water System Specialists

CERTIFICATION GRADE (both Distribution and Treatment)	EXPERIENCE	
	"Hands On" Experience (Years)	Design or Associated Experience (Years)
4	8	10
3	4	8
2	2	4
1	0	0

Note:  
 1. All experience must be verifiable.  
 2. All "hands on" experience must be in the area of operation, repair, and maintenance of a public drinking water system.  
 3. Associated experience may be in the design, construction, and inspection of public drinking water systems and/or direct consultation for public drinking water systems.  
 4. The required experience, as outlined above, must be either in the "Hands On" category or in the Design or Associated category, not in combination.  
 5. Persons applying for and passing the specialist exam who do not meet the minimum qualifications will be issued a restricted certificate similar to the water system operator restricted certificate.  
 6. Restricted Specialist Certificate shall be changed to unrestricted status upon written request of certificate holder after minimum experience qualifications have been met.

TABLE 3  
 SUMMARY OF UTAH  
 WATER UTILITY CLASSIFICATION SYSTEM  
 WATER TREATMENT PLANT CLASSIFICATION

Grade	1	2	3	4
Population served	1500 or less	1501 to 5000	5001 to 15,000	over 15,000
Water plant points	0-40	41-65	66-90	91-UP

TABLE 4  
 SUMMARY OF UTAH  
 WATER UTILITY CLASSIFICATION SYSTEM  
 DISTRIBUTION CLASSIFICATION

Grade	Small System	1	2	3	4
Population served	500 or less	501 to 1500	1501 to 5000	5001 to 15,000	over 15,000
Distribution points	0-10	0-10	10-25	26-50	51-UP

**KEY: drinking water, environmental protection, administrative procedure  
 November 20, 2000  
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**19-4-104  
 63-46b-4**

Distribution systems are those which use groundwater sources (springs and wells) and which may or may not use chlorination. Classification will generally be made in accordance with the following five classes. The Commission may change the classification of a particular distribution system when there are unusual factors affecting the complexity of transmission, mixing of sources, or potential health hazards.

TABLE 5  
 MINIMUM REQUIRED QUALIFICATIONS FOR  
 UTAH WATERWORKS OPERATORS

EDUCATION	EXPERIENCE Direct				
	Degree	Assoc. Degree	High School	Non High School	
Certification Grade (Both Dist. and Treatment)				Respon. Charge Years	Total Years
	X			2	4
		X		2	6
4			X	4	8
				X	5
					10

**R309. Environmental Quality, Drinking Water.****R309-305. Certification Rules for Backflow Technicians.****R309-305-1. Purpose.**

These rules are established:

- (1) in order to promote the use of trained, experienced professional personnel in protecting the public's health; and
- (2) To establish standards for training, examination, and certification of those personnel involved with cross connection control program administration, testing, maintenance, and repair of backflow prevention assemblies. In addition to establishing standards for the instruction of Backflow Technicians.

**R309-305-2. 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(4)(a) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-305-3. Extent of Coverage.**

These rules shall apply to all personnel who will be:

- (1) directly involved with the administration or enforcement of any cross connection control program being administered by a drinking water system; or
- (2) testing, maintaining and/or repairing any backflow prevention assembly; or
- (3) instructors within the certification program, regardless of institution or program.

**R309-305-4. Definitions.**

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

(1) Backflow Technician - An individual who has met the requirements and successfully completed the course of instruction and certification requirements for Class I, II or III backflow technician certification as outlined herein.

(a) Class I Backflow Technician is a Cross Connection Control Program Administrator.

(b) Class II Backflow Technician is a Backflow Assembly Tester.

(c) Class III Backflow Technician is a Backflow Instructor Trainer.

(2) Class - means the level of certification of a Backflow Technician (Class I, II or III).

(3) Performance Examination - means a closed book hands on demonstration of an individual's ability to conduct a field test on backflow prevention assemblies.

(4) Proctor - means a Class III Technician authorized to administer the written or the performance examination.

(5) Renewal Course - means a course of instruction, approved by the Commission, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

(6) Secretary to the Commission - means that individual appointed by the Executive Secretary to conduct the business of the Commission and to make recommendations to the Executive Secretary regarding backflow technician certification.

(7) Written Examination - means the examination for record used to determine the competency and ability of applicants in understanding of the required course of instruction.

**R309-305-5. General Policies.**

(1) Certification Application: Any individual may apply for certification.

(2) Certification Classes: The classes of certificates shall be: Class I, Class II, and Class III.

(a) Class I Backflow Technician - Cross Connection Control Program Administrator: This certificate shall be issued to those individuals who are directly involved in administering a cross connection control program, who have demonstrated

their knowledge and ability by passing the certification examination.

(i) These individuals may NOT test, maintain or repair any backflow prevention assembly for record (except to insure proper testing techniques are being utilized within their jurisdiction).

(ii) These individuals may conduct plan/design reviews, hazard assessment investigations, compliance inspections, and enforce local laws, codes, rules and regulations and policies within their jurisdictions, and offer technical assistance as needed.

(b) Class II Backflow Technician - Backflow Assembly Tester: This certificate shall be issued to those individuals who have demonstrated their knowledge and ability by passing the written and performance certification examinations and in addition having proven qualified and competent to test, maintain, and/or repair (see R309-305-5(3)(b)) backflow prevention assemblies (commercially as well as within their jurisdiction) by passing the practical examination.

(c) Class III Backflow Technician - Backflow Instructor Trainer: This certificate shall be issued to those individuals who have successfully completed a 3 year renewal cycle as a Class II Technician and in addition have proven qualified and competent to instruct approved Backflow Technician Certification classes by participating in and passing an approved Class III certification course.

(3) Certification Requirements: Those individuals seeking certification as a Backflow Technician must participate in an approved Technician's course of instruction and pass the examination required per class of certification.

(a) All individuals who instruct Backflow Technician training courses must hold a current Class III - Backflow Technician certificate.

(b) The issuance of a Backflow Technician certificate (Class I, II or III) does NOT authorize that individual to install or replace any backflow prevention assembly. The installation replacement or repair of assemblies must be made by a tester having appropriate licensure from the Department of Commerce, Division of Occupational and Professional Licensing, except when the Backflow Technician is an agent of the assembly owner.

**R309-305-6. Technician Responsibilities.**

(1) All technicians shall notify the Division of Drinking Water, local health department and the appropriate public water system of any backflow incident as soon as possible, but within eight hours. The Division can be reached during business hours at 801-536-4200 or after hours at 801-536-4123;

(2) All technicians shall notify the appropriate public water system of a failing backflow prevention assembly within five days;

(3) All technicians shall ensure that acceptable procedures are used for testing, repairing and maintaining any backflow prevention assembly;

(4) All technicians shall report the backflow prevention assembly test results to the appropriate public water system within 30 days;

(5) All technicians shall include, on the test report form, any materials or replacement parts used to effect a repair or to perform maintenance on a backflow prevention assembly;

(6) All technicians shall ensure that any replacement part is equal to or greater than the quality of parts originally supplied within the backflow prevention assembly and are supplied only by the manufacturer or their agent;

(7) All technicians shall not change the design, material, or operational characteristics of the assembly during any repair or maintenance;

(8) All technicians shall perform each test and shall be responsible for the competency and accuracy of all testing and

reports thereof;

(9) All technicians shall ensure the status of their technician certification is current; and

(10) All technicians shall be equipped with and competent in the use of all tools, gauges, and equipment necessary to properly test, repair and maintain a backflow prevention assembly.

### **R309-305-7. Examinations.**

(1) Exam Issuance: The examination recognized by the Commission for certification shall be issued through the Division of Drinking Water for both initial certification and renewal of certification.

If an individual fails an examination, the individual may file another application for reexamination on the next available test date.

(a) Examinations (both written and performance) that are used to determine competency and ability shall be approved by the Cross Connection Control Commission prior to being issued.

(b) Oral examinations may be administered to an individual who has failed to pass at least two consecutive written examinations. The oral examination shall be administered by at least one Commission member and two Class III Backflow Technicians. If the individual fails the examination, he shall be given written notification of those areas deficient.

(2) Exam Scoring: Class I, Class II and Class III Technician's must successfully complete a written exam with a score of 70% or higher. Class II Technician's must also successfully demonstrate competence and ability in the performance examination, for the testing of a Pressure Vacuum Breaker Assembly, a Spill-Resistant Pressure Vacuum Breaker Assembly, a Double Check Valve Assembly, and a Reduced Pressure Principal Backflow Prevention Assembly.

(a) The performance examination shall be conducted by a minimum of two Class III Technicians.

(b) Each candidate must demonstrate competence and shall be evaluated by a proctor and assessed a pass or fail grade in each of the following areas.

- (i) Properly identify backflow assembly
- (ii) Properly identify test equipment needed
- (iii) Properly connect test equipment
- (iv) Test assembly
- (v) Identify inaccuracies
- (vi) Properly diagnose assembly problems
- (vii) Properly record test results

The candidate must receive a pass grade from the proctor in all areas listed above for each assembly tested in order to pass the performance examination.

(c) An individual may apply for reexamination of either portion of the examination a maximum of two times. After a third failing grade, the individual must register for and complete another technician's course prior to any further reexamination.

(3) Class III Exam: Class III Technicians must participate in, and pass, a Class III Certification course, approved by the Cross Connection Control Commission, in addition to the successful completion of the Class II Technician's certification course.

### **R309-305-8. Certificates.**

(1) Certificate Issuance: For a certificate to be issued, the individual must complete a Technician's training course and pass with a minimum score of 70% the written examination. For Class II and III certificates, passing marks on the performance examination shall also be required.

(2) Certificate Renewal: The Backflow Technician's certificate is issued by the Executive Secretary and shall expire December 31, three years from the year of issuance.

(a) Backflow Technician certificates shall be issued by the

Commission Secretary, by delegated authority from the Drinking Water Board.

(b) The Backflow Technician's certificate may be renewed up to six months in advance of the expiration date.

(c) To renew a Class I or II Technician certificate, the Technician must register and participate in an approved backflow prevention renewal course, and pass the renewal examination (minimum score of 70%) which shall include a performance portion for Class II Certification.

(d) To renew a Class III Technician certificate, the following criteria shall be met:

(i) In the 3 year certification period a total of three events from the following list shall be obtained in any combination:

(A) Instruction at a Commission approved backflow technician certification or renewal course.

(B) Serve as a proctor for the performance examination at a Commission approved backflow technician certification or renewal course.

(ii) Attendance at a minimum of two of the annual Class III coordination meetings or receive a meeting update from the Commission Secretary.

(iii) Attendance and successful review at a Class III renewal course, as approved by the Cross Connection Control Commission. The course would consist of presentation of a randomly picked topic in backflow prevention before a peer group of other Class III technicians, and a demonstration of knowledge of all the testing equipment available by a random selection of test equipment for the technician to perform the performance exam.

(e) Should the applicant fail the renewal written examination (minimum score of 70%), renewal of that existing license shall not be allowed until a passing score is obtained. If the applicant fails to pass the test after three attempts, the applicant shall be required to participate in an approved Backflow Technician's course before retaking the written and performance examinations. (Class I Technicians only need to pass the written examination.)

(3) Certification Revocation: The Executive Secretary may suspend or revoke a Backflow Technician's certification, for good cause, including any of the following:

(a) The certified person has acted in disregard for public health or safety;

(b) The certified person has engaged in activities beyond the scope of their licensure through the Department of Commerce, Division of Professional Licensing (i.e. installation, or replacement of assemblies);

(c) The certified person has misrepresented or falsified figures or reports concerning backflow prevention assembly or test results;

(d) The certified person has failed to notify proper authorities of a failing backflow prevention assembly within five days, as required by R309-305-6(2);

(e) The certified person has failed to notify proper authorities of a backflow incident for which the technician had personal knowledge, as required by R309-305-6(1);

(f) The certified person has implemented a change of the design, material or operational characteristics of a backflow prevention assembly that is in use, and which has not been authorized by the Executive Secretary; or

(g) Disasters or "Acts of God", which could not be reasonably anticipated or prevented, shall not be grounds for suspension or revocation actions.

### **R309-305-9. Fees.**

(1) Fees: The fees for certification shall be submitted in accordance with Section 63-38-3.2.

(2) All fees shall be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.



(3) Renewal Fees: The renewal fee for all classes of Technicians shall be in accordance with Section 63-38-3.2.

(4) All fees shall be deposited in a special account to defray the cost of the program.

(5) All fees are non-refundable.

#### **R309-305-10. Training.**

(1) Training: Minimum training course curriculum, written tests and performance tests shall be established by the Commission and implemented by the Secretary of the Commission for both the Technician Class I and Class II courses and the renewal courses.

(a) The length of the initial certification course for a Class I cross connection control program administrator shall be a minimum of 32 hours including examination.

(b) The length of the initial certification course for a Class II backflow assembly tester shall be a minimum of 32 hours excluding examination.

(c) The length of each renewal course shall be a minimum of 16 hours including the renewal examination (both written and performance examinations).

#### **R309-305-11. Cross Connection Control Commission.**

(1) Appointment of Members: A Cross Connection Control Commission shall be appointed by the Drinking Water Board from nominations made by cooperating agencies.

(2) Responsibility: The Commission is charged with the responsibility of conducting all work necessary to promote the cross connection program as well as recommending qualified individuals for certification, and overseeing the maintenance of necessary records.

(3) Representative Agencies: The Commission shall consist of seven members:

(a) One member (nominated by the League of Cities and Towns) shall represent a community drinking water supply.

(b) One member (nominated by the Utah Pipes Trades Education Program) shall represent the plumbing trade and must be a licensed Journeyman Plumber.

(c) One member (nominated by the Utah Mechanical Contractors Association) shall represent the mechanical trade contractors.

(d) One member (nominated by the Drinking Water Board) shall represent the Drinking Water Board.

(e) One member (nominated by the Rural Water Association of Utah) shall represent small water systems.

(f) One member (nominated by the Utah Chapter American Backflow Prevention Association) shall represent Class II Backflow Technicians and shall be a Class II or III Backflow Technician.

(g) One member (nominated by the Utah Association of Plumbing and Mechanical Officials) shall represent plumbing inspection officials and shall be a licensed plumbing inspector.

(4) Term: Each member shall serve a two year term. At the initial meeting of the Commission, lots shall be drawn corresponding to two one and three two year terms. Thereafter, all Commission members' terms shall be on a staggered basis.

(5) Nominations of Members: All nominations of Commission members shall be presented to the Drinking Water Board, which reserves the right to refuse any nomination.

(6) Unexpired Term: An appointment to succeed a Commission member who is unable to complete his full term shall be for the unexpired term only, and shall be nominated to, and appointed by, the Drinking Water Board in accordance with R309-305-11(1).

(7) Quorum: At least four Commission members shall be required to constitute a quorum to conduct the Commission's business.

(8) Officers: Each year the Commission shall elect officers as needed to conduct its business.

(a) The Commission shall meet at least once a year.

(b) All actions taken by the Commission shall require a minimum of four affirmative votes.

#### **R309-305-12. Secretary of the Commission.**

(1) Appointment: The Executive Secretary of the Drinking Water Board shall appoint, with the consent of the Commission, a staff member to function as the Secretary to the Commission. This Secretary shall serve to coordinate the business of the Commission and to bring issues before the Commission.

(2) Duties: The Secretary's duties shall be to:

(a) act as a liaison between the Commission, certified Technicians, public water suppliers, and the public at large;

(b) maintain records necessary to implement and enforce these rules;

(c) notify sponsor agencies of Commission nominations as needed;

(d) coordinate and review all cross connection control programs, certification training and the certification of Backflow Technicians;

(e) serve as a source of public information for Certified Technicians, water purveyors, and the public at large;

(f) receive and process applications for certification;

(g) investigate and verify all complaints against or concerning certified Backflow Prevention Technicians, and advise the Executive Secretary of the Drinking Water Board regarding any enforcement actions that are being recommended by the Commission;

(h) develop and administer examinations;

(i) review and correct examinations.

(3) The Secretary to the Commission is also responsible for making recommendations to the Executive Secretary regarding backflow technician certification as provided in these rules.

#### **KEY: drinking water, cross connection control, backflow assembly tester**

**October 15, 2004**

**Notice of Continuation March 22, 2010**

**19-4-104(4)(a)**

**63-46b-4**

**R309. Environmental Quality, Drinking Water.****R309-352. Capacity Development Program.****R309-352-1. Authority.**

(1) Under authority granted in Subsection 19-4-104(1)(a)(v), the Drinking Water Board adopts this rule implementing the capacity development program and governing the allotment of federal funds to public water systems to assist them to comply with the Federal 1996 Reauthorized Safe Drinking Water Act (SDWA).

**R309-352-2. Purpose.**

(1) The SDWA makes certain federal funds available to states, section 1452(k)(2)(C) to provide assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) to ensure all new public water systems will be able to comply with the SDWA, to enhance existing public water systems' capability to comply with the SDWA, and determine which public water systems applying for financial assistance are eligible to use the State Revolving Funds.

(2) The purpose of the Capacity Development Program is to enhance and ensure the technical, financial, and managerial capacity of water systems. The long range goals are to promote compliance with drinking water regulations for the long term and the public health protection objectives of the Safe Drinking Water Act.

**R309-352-3. Definitions.**

(1) Definitions for terms used in this rule are given in R309-200, except as modified below.

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

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

(4) "Small Water System" means a water system with less than 3,300 people being served.

(5) "Public Water System" means a system providing water for human consumption and other domestic uses through pipes or other constructed conveyances, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year.

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

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

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

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

**R309-352-4. General.**

(1) Capacity development criteria are to be used as a guideline for all water systems. These criteria constitute a

standard applied when reviewing new systems applications, reviewing applications for financial assistance and assessing capacity of water systems rated unapproved or in significant non-compliance by the State or the EPA.

(2) Water systems shall meet the following criteria:

(a) Technical Capacity Criteria:

(i) Finished water shall meet all drinking water standards as required by Utah State Rules;

(ii) Personnel shall operate the system in accordance with the operations and maintenance manual;

(iii) A valid water right shall be obtained;

(iv) Water system shall meet source, storage, and distribution requirements as per Utah State Rules;

(v) Water system shall not be rated unapproved or in significant non-compliance by the State or the EPA.

(b) Managerial Capacity Criteria:

(i) The system owner(s) shall be clearly identified to the Executive Secretary;

(ii) The system shall meet all of the operator certification requirements as per R309-301 and backflow technician certification requirements as per R309-302.

(iii) A system or method shall be in-place to effectively maintain all requisite records, distribution system histories/maps, and compliance information; and

(iv) An operating plan shall include names and certification level of the system operator(s), facility operation and maintenance manuals, routine maintenance procedures, water quality violations response procedures, water quality monitoring plan, training plan, and emergency response plan;

(v) The Executive Secretary of the Drinking Water Board shall be informed of management changes.

(c) Financial Capacity Criteria:

(i) Revenues shall be greater than expenses;

(ii) A financial statement compilation by a Certified Public Accountant, or an audit if otherwise required of the water system, shall be completed every three years;

(iii) The water system shall devise and implement a managerial budget and accounting process in accordance with generally accepted principals;

(iv) The operating ratio (operating revenue divided by operating expenses excluding depreciation and required reserves) shall be greater than 1.0;

(v) The coverage ratio (total revenues minus operating expenses excluding depreciation and required reserves divided by annual debt service) shall be greater than 1.0;

(vi) Customers shall be metered; and

(vii) An emergency/replacement reserve shall be created and funded.

**R309-352-5. Requirements for New Community and Non-Community Water Systems.**

(1) Feasibility Review, (See R309-101-3).

(2) Each proposed, new water system must demonstrate that it has adequate technical, managerial, and financial capacity before it may provide water for human consumption. Proposed water systems shall submit the following for Capacity Assessment Review:

(3) Project Notification form (see R309-201-6),

(4) A business plan, which includes a facilities plan, management plan, and financial plan.

(a) Facilities plan. The facilities plan shall describe the scope of the water services to be provided and shall include the following:

(i) A description of the nature and extent of the area to be served, and provisions for extending the water supply system to include additional area. The description shall include population and land use projections and forecasts of water usage;

(ii) An assessment of current and expected drinking water

compliance based on monitoring data from the proposed water source;

(iii) A description of the alternatives considered, including interconnections with other existing water systems, and the reasons for selecting the method of providing water service. This description shall include the technical, managerial, financial and operational reasons for the selected method, and

(iv) An engineering description of the facilities to be constructed, including the construction phases and future phases and future plans for expansion. This description shall include an estimate of the full cost of any required construction, operation, and maintenance;

(b) Management plan. The management plan shall describe what is needed to provide for effective management and operation of the system and shall include the following:

(i) Documentation that the applicant has the legal right and authority to take the measures necessary for the construction, operation, and maintenance of the system. The documentation shall include evidence of ownership if the applicant is the owner of the system or, if the applicant is not the owner, legally enforceable management contracts or agreements;

(ii) An operating plan that describes the tasks to be performed in managing and operating the system. The operating plan shall consist of administrative and management organization charts, plans for staffing the system with certified operators, and provisions for an operations and maintenance manual; and

(iii) Documentation of credentials of management and operations personnel, cooperative agreements or service contracts including demonstration of compliance with R309-301 water system operator certification rule; and

(c) Financial plan. The financial plan shall describe the system's expected revenues, cash flow, income and issuance and repayment of debt for meeting the costs of construction, and the costs of operation and maintenance for at least five years from the date the applicant expects to begin system operation.

(5) After the information submitted by the applicant is complete, the Division of Drinking Water shall conduct a Capacity Assessment Review. The applicant shall be notified in writing whether or not the new system has demonstrated adequate capacity. No new community or non-transient, non-community system will be approved if it lacks adequate capacity.

(6) Those systems constructed without approval shall be subject to: points as per R309-400, administrative and/or civil penalties and fines.

**R309-352-6. Minimum Capacity Required for Financial Assistance Under Provisions of R309-351.**

(1) To obtain financial assistance, the applicant shall follow a two-step application process. First, the applicant shall complete a short application to establish a position on the priority list. A second application shall include Capacity Assessment Worksheets, project information, and financial information to verify priority ranking, determine eligibility, and provide a basis for grant/loan parameters.

(2) Financial assistance under the provisions of R309-351 shall not be available to a system that lacks the technical, managerial, or financial capability to maintain SDWA compliance, or is in significant noncompliance with any R309-101 through 104 or 200 through 211, unless the use of the financial assistance will ensure compliance or if the owner of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to comply with the SDWA over the long term.

**KEY: drinking water, funding, regionalization, capacity development**  
September 15, 1999

19-4-104

Notice of Continuation March 23, 2010

**R309. Environmental Quality, Drinking Water.****R309-400. Water System Rating Criteria.****R309-400-1. Authority.**

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-100 through R309-705 hereinafter referred to as Rules.

**R309-400-2. Extent of Coverage.**

These rules shall apply to all public water systems as defined in R309-100.

**R309-400-3. Definitions.**

Approved - means that the public water system is operating in substantial compliance with all the Rules as measured by this rule.

Board - means the Drinking Water Board.

Community Water System - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

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

Corrective Action - means a provisional rating for a public water system not in compliance with the Rules, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

Executive Secretary - means the Executive Secretary of the Drinking Water Board.

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

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

Major Chemical Monitoring Violation - means that no initial background chemical sample was taken as required in R309-515-4(5).

Maximum Contaminant Level (MCL) - The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Individual maximum contaminant levels (MCLs) are listed in R309-200.

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

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

Minor Chemical Monitoring Violation - means that the required chemical sample(s) was not taken in accordance with R309-205, 210 or 215.

Non-Community Water System - means a public water system that is not a community water system or a non-transient non-community water system.

Non-Transient, Non-Community Water System - means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

Not Approved - means the water system does not fully comply with the Rules as measured by this rule.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in

connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with system but not under such control.

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

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

Shall - means that a particular action is obliged and has to be accomplished.

**R309-400-4. Water System Ratings.**

(1) The Executive Secretary shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to Not Approved and Corrective Action rated water systems for each violation of these requirements (R309-100 through R309-705) as the requirements apply to each individual water system. The number of points that shall be assessed are outlined in the following sections of this rule. The number of points represent the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality, Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings.

(a) Approved - In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

- (i) Community water system - 150 points;
- (ii) Non-Transient Non-Community water system - 120 points; and
- (iii) Non-Community water system - 100 points.

(b) Not Approved - In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) Corrective Action - In order to qualify for a Corrective Action rating the public water system must submit the following:

(i) A written agreement to the Executive Secretary stating a willingness to comply with the requirements set forth in the Rules; and

(ii) A compliance schedule and time table agreed upon by the Executive Secretary outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and

(iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Executive Secretary. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Executive Secretary may at any time rate a water system not approved if an immediate threat to public health exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or

assessed points to the Drinking Water Board by filing a request for a hearing with the Executive Secretary. The Executive Secretary shall place this matter on the agenda of the next regular meeting and so inform the appellant. The request for a hearing must be received by the Executive Secretary at least 14 calendar days prior to a scheduled Board meeting in order to be placed on the Board's agenda.

**R309-400-5. Quality, Monitoring and Public Notification Violations.**

(1) Bacteriologic: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5(6); or the monitoring requirements in R309-210-5; and the associated public notification requirements in R309-220. The bacteriological assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly.

(a) For each major bacteriological routine monitoring violation 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) For each minor bacteriological routine monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(c) For each major bacteriological repeat monitoring violation 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) For each minor bacteriological repeat monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(e) For each additional monitoring violation (R309-210-5(2)(e)) 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(f) For each non-acute bacteriological MCL violation (R309-200-5(6)(a)) 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) For each acute bacteriological MCL violation (R309-200-5(6)(b)) 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(2) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5; or the monitoring requirements in R309-205, 210 and 215; and the associated public notification requirements in R309-220. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Executive Secretary.

(a) Inorganic and Metal Contaminants:

(i) For each major chemical monitoring violation for inorganic and metal contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for inorganic and metal contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for inorganic and metal contaminants 30 points shall be assessed. For each failure to

perform the associated public notification 5 points shall be assessed.

(b) Sulfate (for non-community water systems only):

(i) For each major chemical monitoring violation for sulfate 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for sulfate 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for sulfate 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(c) Radiologic Contaminants:

(i) For each major chemical monitoring violation for radiological contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for radiological contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for radiological contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) Asbestos Contaminants:

(i) For each major chemical monitoring violation for source water or distribution system asbestos 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for source water or distribution system asbestos 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for source water or distribution system asbestos 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(e) Nitrate:

(i) For each routine chemical monitoring violation for nitrate 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrate 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(f) Nitrite:

(i) For each routine chemical monitoring violation for nitrite 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrite 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) Volatile Organic Chemicals:

(i) For each major chemical monitoring violation for volatile organic chemical contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for volatile organic chemical contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3

points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(i) Disinfection Byproducts:

(i) Total Trihalomethanes:

(A) For each routine chemical monitoring violation for total trihalomethanes 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for total trihalomethanes 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) Haloacetic Acids (HAA5):

(A) For each routine chemical monitoring violation for HAA5 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for HAA5 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(iii) Bromate:

(A) For each routine chemical monitoring violation for bromate 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for bromate 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(iv) Chlorite:

(A) For each routine chemical monitoring violation for chlorite 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for chlorite 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(j) Disinfectant Residuals:

(i) Chlorine:

(A) For each routine chemical monitoring violation for chlorine 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for chlorine 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) Chloramines:

(A) For each routine chemical monitoring violation for chloramines 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for chloramines 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(iii) Chlorine Dioxide:

(A) For each routine monitoring violation for chlorine dioxide 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each non-acute chlorine dioxide MCL violation 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(C) For each acute chlorine dioxide MCL violation 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points

shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) A system which fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification 10 points shall be assessed.

(iv) A system which fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification 10 points shall be assessed.

(v) A system which fails to complete public notification/education if the lead/copper action levels have been exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system which still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification 2 point shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(m) Surface Water Treatment:

(i) For water systems having sources which are classified as under direct influence from surface water and which fail to abandon, retrofit or provide conventional complete treatment or it's equivalent within 18 months of notification shall be assessed 150 points. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

(ii) Quality and Monitoring: The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period.

(A) Turbidity:

(I) For each turbidity exceedance which requires tier 1 notification under R309-220-5(1)(e) or (f) 50 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(II) For each turbidity exceedance which requires tier 2 notification under R309-220-5(1)(e) or (f) 35 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(III) For each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent 25 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(IV) For any period of time which exceeds 4 hours where the system fails to continuously measure (or perform grab samples) the combined filter effluent turbidity 50 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(V) For a water system which failure to repair continuous turbidity monitoring equipment within 5 working days 50 points shall be assessed.

(B) Disinfection:

(I) For each instance where the disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours 25 points shall be assessed. For the associated failure to perform public notification 5 points shall

be assessed.

(II) For each instance where there is insufficient disinfectant contact time 35 points shall be assessed. For the associated failure to perform public notification 5 points shall be assessed.

(iii) Treatment Process Control:

(A) For each instance a treatment facility exceeds the assigned filter rates 30 points shall be assessed.

(B) For each month a water system fails to verify calibration of the plant turbidimeters 5 points shall be assessed.

(C) For each month a water system fails to submit a water treatment plant report 50 points shall be assessed.

### **R309-400-6. Physical Facilities.**

All points assessed to public water systems via this subsection are based upon violation of R309-500 through R309-705 unless otherwise noted. These points shall be assessed and updated upon notification of the Executive Secretary and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed 150 points.

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth 2 points shall be assessed.

(b) Where no facilities exist for release (wasting) of less desirable water held in storage 2 points shall be assessed.

(c) Where the diversion facilities do not minimize frazil ice formation by holding intake velocities to less than 0.5 feet per second 2 points shall be assessed.

(d) Where diversion facilities are not adequately protected from damage by ice buildup 2 points shall be assessed.

(e) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake 2 points shall be assessed.

(f) Where reservoirs have not had brush and trees removed to the high water level 2 points shall be assessed.

(g) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading 10 points shall be assessed.

(3) Well Sources

(a) For each well which is not equipped with a sanitary seal, or has any unsealed opening into the well casing 50 points shall be assessed.

(b) For each well which does not utilize food grade mineral oil for pump lubrication 25 points shall be assessed.

(c) For each well casing which does not terminate at least 12 inches above the pumphouse floor, 18 inches above ground, and/or five feet above the highest flood elevation and is subject to flooding 20 points shall be assessed.

(d) For each well fitted with a pitless adaptor that does not maintain a water tight seal throughout shall be assessed 50 points.

(e) For each wellhead that is not properly secured 20 points shall be assessed.

(f) For each well that is equipped with a pump to waste line that does not discharge through an approved air gap shall be assessed 20 points.

(g) For each well that is equipped with a pump to waste line that is not properly screened shall be assessed 5 points.

(h) For each well that is equipped with a pump to waste line that discharges to a receptacle without local authorization shall be assessed 2 points.

(i) For each well that does not have a means to measure drawdown 1 point shall be assessed.

(j) For each well casing vent which is not properly covered with a No. 14 mesh screen 2 points shall be assessed.

(k) For each well casing vent which is not properly turned down 2 points shall be assessed.

(l) For each well casing vent which does not discharge through a proper air gap 2 points shall be assessed.

(m) For each well which has discharge piping that is not properly equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow and 5) shutoff valve 1 point shall be assessed for each component not present.

(n) For each well where there is no means to release trapped air from the discharge piping 6 points shall be assessed.

(o) For each well house which does not have a drain-to-daylight installed 5 points shall be assessed.

(p) For each well which has a cross connection present in the discharge piping 5 points shall be assessed.

(q) For each well which has discharge piping equipped with an air vacuum relief valve which is not screened 2 points shall be assessed.

(r) For each well which has discharge piping equipped with an air vacuum relief valve which is not properly turned down 2 points shall be assessed.

(s) For each well which has discharge piping equipped with an air vacuum relief valve which does not discharge through an approved air gap 2 points shall be assessed.

(t) For each well which has rotating and electrical equipment that is not provided with protective guards 2 points shall be assessed.

(4) Spring Sources:

(a) For each spring source which allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices) 10 or 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water.

(b) For each spring area which does not have a minimum of ten feet of relative impervious soil or an acceptable liner 10 points shall be assessed.

(c) For each spring area that has deep rooted vegetation within the fenced collection area 10 points shall be assessed.

(d) For each spring area that has deep rooted vegetation interfering with the spring collection 10 points shall be assessed.

(e) For each spring with a spring collection/junction box which does not have a proper shoebox lid shall be assessed 5 points.

(f) For each spring with a spring collection/junction box which does not have a proper gasket on the lid shall be assessed 5 points.

(g) For each spring with a spring collection/junction box which lacks an adequate air vent 5 points shall be assessed.

(h) For each spring with a spring collection/junction box with a vent that is not properly screened shall be assessed 2 points.

(i) For each spring with a spring collection/junction box with a vent that is not properly down turned shall be assessed 2 points.

(j) For each spring with a spring collection/junction box with a vent that is not properly air gapped shall be assessed 2 points.

(k) For each spring with a spring collection/junction box that lacks a raised access entry shall be assessed 5 points.

(l) For each spring with a spring collection/junction box which is not secured against unauthorized access shall be assessed 20 points.

(m) For each spring collection area without a proper fence (unless the spring is located in a remote area where no grazing or public access is possible as specified in R309-515-7(7)(e)) 10 points shall be assessed.

(n) For each spring collection area that does not have a

diversion channel capable of diverting surface water away from the collection area 5 points shall be assessed.

(o) For each spring system which does not have a permanent flow measuring device 5 points shall be assessed.

(p) For each spring area with an overflow/drain that is not properly screened with a No. 4 mesh screen 5 points shall be assessed.

(q) For each spring collection/junction box that does not have adequate freefall (12 to 24 inches) between the drain invert and the surrounding ground 5 points shall be assessed.

(r) For each spring collection/junction box that has any unsealed opening(s) 50 points shall be assessed.

(5) Pump Stations.

(a) For a pumping facility which does not have a positive-acting check valve between the pump and the isolation valve 1 point shall be assessed. R309-540-5(6)(a).

(b) For a pumping facility which does not have a standard pressure gauge on the discharge line 1 point shall be assessed. R309-540-5(6)(c)(i).

(c) For a pumping facility which does not have a flow measuring device on the discharge piping 1 point shall be assessed. R309-540-5(6)(c)(iii).

(d) For a pumping facility which does not have isolation valve(s) on the discharge piping 1 point shall be assessed. R309-540-5(6)(a).

(e) For a pumping facility which does not have isolation valve(s) on the suction side of each pump 1 point shall be assessed. R309-540-5(6)(a).

(f) For a pumping facility without adequate drainage 5 points shall be assessed. R309-540-5(2)(a)(v) and (vi).

(g) For a pumping facility where the discharge line from the air release valve is not properly screened with number 14 non-corrodible mesh screen 2 points shall be assessed. R309-550-6(6)(a).

(h) For a pumping facility where the discharge line from the air release valve is not properly air gapped 2 points shall be assessed. R309-550-6(6)(a).

(i) For a pumping facility where the discharge line from the air release valve is not properly down-turned 2 points shall be assessed. R309-550-6(6)(a).

(j) For a pumping facility where the building and equipment is not protected from flooding 5 points shall be assessed. R309-540-5(2)(a)(ii), (iii) and (iv).

(k) For a pumping facility where there is inadequate heating, lighting or ventilation 5 points shall be assessed. R309-540-5(2)(e), (f) and (g).

(l) For a pumping facility where there are cross connections present 5 points shall be assessed. R309-540-5(2)(h).

(m) For a pumping facility which does not have at least two equal and functioning pumping units 20 points shall be assessed. R309-540-5(4)(b).

(n) For a pumping facility which cannot meet the demand when the largest pumping unit is out of service 20 points shall be assessed. R309-540-5(4)(b).

(o) For a pumping facility which utilizes oil lubrication not suitable for human consumption 25 points shall be assessed. R309-105-10(7).

(p) For a pumping facility which does not have protective guards on rotating and electrical equipment 2 points shall be assessed. R309-545-19(1).

(q) For a pumping facility which does not have an air release valve or other means to release trapped air located on the pump discharge piping 6 points shall be assessed. R309-515-6(12)(e)(v).

(r) For a pumping facility which is not secured against unauthorized access shall be assessed 20 points.

(6) Hydropneumatic pressure tanks.

(a) For a pressure tank without at least two pumping units

20 points shall be assessed. R309-540-6(5).

(b) For a pressure tank without a bypass piping to permit operation of the system while it is being repaired or painted 2 points shall be assessed. R309-540-6(4).

(c) For a pressure tank which lacks a 24 inch access manhole where applicable 1 point shall be assessed. R309-540-6(6).

(d) For a pressure tank which lacks a drain 1 point shall be assessed. R309-540-6(6).

(e) For a pressure tank which lacks a pressure gauge 1 point shall be assessed. R309-540-6(6).

(f) For a pressure tank which lacks a water sight glass where applicable 1 point shall be assessed. R309-540-6(6).

(g) For a pressure tank which lacks automatic or manual air blow-off 1 point shall be assessed. R309-540-6(6).

(h) For a pressure tank which lacks a means to add air 1 point shall be assessed. R309-540-6(6).

(i) For a pressure tank which lacks pressure operated start-stop controls for the pump(s) 1 point shall be assessed. R309-540-6(6).

(j) For a pressure tank with a pump cycle that cycles more frequently than once every 4 minutes 5 points shall be assessed. R309-540-6(5).

(k) For a pressure tank and controls that are not secured against unauthorized access 20 points shall be assessed. R309-545-14(3).

(7) Storage:

(a) A water system with an uncovered finished water storage reservoir shall immediately be assessed a rating of not approved.

(b) For each storage reservoir cover that is not sloped so water will drain 10 points shall be assessed.

(c) For each storage reservoir that does not have an access opening 9 points shall be assessed.

(d) For each storage reservoir access that does not have a shoebox type lid with a minimum of a 2 inch overlap 3 points shall be assessed.

(e) For each storage reservoir access that lacks a proper gasket 3 points shall be assessed.

(f) For each storage reservoir access that lacks a minimum rise of 4 inches above the tank roof (18 inches above an earthen cover) 3 points shall be assessed.

(g) For each storage reservoir that is not vented 6 points shall be assessed.

(h) For each storage reservoir vent that is not turned down or covered from rain and dust 2 points shall be assessed.

(i) For each storage reservoir vent that does not terminate a minimum of 24 to 36 inches above the surface of the storage tank roof 2 points shall be assessed.

(j) For each storage reservoir vent that is not screened with number 14 non-corrodible mesh screen with a larger gauge protection screen 2 points shall be assessed.

(k) For each storage reservoir that lacks an overflow 15 points shall be assessed.

(l) For each storage reservoir overflow that does not terminate 12 to 24 inches above the ground 5 points shall be assessed.

(m) For each storage reservoir overflow that is not screened with number 4 non-corrodible mesh screen 5 points shall be assessed.

(n) For each storage reservoir overflow that is connected to a sewer without an appropriate air gap 5 points shall be assessed.

(o) For each storage reservoir with a drain that is not properly screened 5 points shall be assessed.

(p) For each storage reservoir with a drain that does not discharge through a physical airgap of at least 2 pipe diameters 5 points shall be assessed.

(q) For each storage reservoir with inadequate or improper



means of site drainage 5 points shall be assessed.

(r) For each storage reservoir with any unsealed roof penetrations 50 points shall be assessed.

(s) For each storage reservoir where the roof and sidewalls are not water tight shall be assessed 10 to 50 points based upon the size and number of cracks, the loss of structural integrity and the access of contamination to the drinking water.

(t) For each storage reservoir without an access ladder, ladder guards, balcony railings or safely located entrance hatches 2 points shall be assessed.

(u) For each storage reservoir with internal coatings not in compliance with ANSI/NSF standard 61 30 points shall be assessed.

(v) For a storage facility which is not secured against unauthorized access shall be assessed 20 points.

(8) Distribution System:

(a) A water system which fails to provide at least the water pressure as required in R309-105-9 at all times and at all locations within the distribution system shall be assessed 50 points.

(b) A water system using unapproved pipe and materials shall be assessed 30 points.

(c) A water system with pipelines installed improperly without adequate clearance or separation from sewer lines shall be assessed 30 points.

(d) A new water system constructed after January 1, 2007 or an existing water system modification without adequate pressure as defined in R309-105-9(2) shall be assessed 50 points.

(e) A water system which has a distribution line that crosses under a surface water body without adequate protection as outlined in R309-550-8(8)(b) shall be assessed 50 points.

(f) A water system which has distribution system flushing devices which are directly connected to a sewer or do not have a proper air gap shall be assessed 20 points.

(g) A water system that does not properly follow the AWWA disinfection standards as adopted in R309-105-10(2) and (3) shall be assessed 10 points.

(h) A water system that is required to provide fire protection or supplies fire hydrants with water mains that are less than 8 inches in diameter shall be assessed 5 points. These points will only be assessed for water mains installed after 1995.

(i) For each air vacuum release valve which is not properly screened and turned down 10 points shall be assessed.

(j) For each air vacuum release valve where the discharge piping does not extend a proper distance above the ground and flood level 10 points shall be assessed.

(k) For each air vacuum release valve chamber without a drain or adequate sump 30 points shall be assessed.

(l) For each air vacuum release valve chamber which shows evidence of flooding 30 points shall be assessed.

(m) For each air vacuum release valve chamber which is flooded at the time of inspection 50 points shall be assessed.

(9) Quantity requirements

(a) A water system which does not have sufficient source capacity to meet peak daily and average yearly flow requirements shall be assessed from 10 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages or low pressure.

(b) A water system which does not have sufficient storage capacity to meet average daily flow requirements shall be assessed from 10 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages.

**R309-400-7. Treatment Processes.**

(1) General Treatment.

(a) For a treatment facility with chemical feeders and

pumps that operate at lower than 20 percent of the feed range 2 points shall be assessed. R309-525-11(7)(a)(viii).

(b) For a treatment facility without anti-siphon control to assure that liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-525-11(9)(c) 2 points shall be assessed. R309-525-11(9)(b)(ii).

(c) For a treatment facility with a process tank that is not properly labeled to designate the chemical contained 2 points shall be assessed. R309-525-11(8)(c)(vii).

(d) For a treatment facility with chemicals not stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit, 2 points shall be assessed. R309-525-11(6)(a)(iii).

(e) For a treatment facility with no cross connection control provided to assure that no direct connections exist between any sewer and the drain or overflow from the feeder, solution chamber or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle, 2 points shall be assessed. R309-525-11(9)(b)(iii).

(f) For a treatment facility with no spare parts available for all feeders to replace parts which are subject to wear and damage 2 points shall be assessed. R309-525-11(7)(b)(v).

(g) For a treatment facility with chemical feed rates not proportional to flows 10 points shall be assessed. R309-525-11(7)(d)(ii).

(h) For a treatment facility with liquid chemical feeders without anti-siphon protection in each feed pump 2 points shall be assessed. R309-525-11(9)(c). Tg12

(i) For a treatment facility with feed lines not protected against freezing 2 points shall be assessed. R309-525-11(8)(d)(i)(C).

(j) For a treatment facility with feed lines not made of durable, corrosion resistant material 2 points shall be assessed. R309-525-11(8)(d)(i)(A).

(k) For a treatment facility with any chemical not conducted from the feeder to the point of application in a separate conduit 2 points shall be assessed. R309-525-11(7)(a)(v).

(l) For a treatment facility where incompatible chemicals are fed, stored or handled together 2 points shall be assessed. R309-525-11(7)(a)(iv).

(m) For a treatment facility where daily operating records do not reflect chemical dosages and total quantities used 2 points shall be assessed. R309-105-14(2)(a).

(n) For a water system that fails to maintain and properly calibrate all instrumentation needed to verify the treatment process 2 points shall be assessed. R309-525-25(4).

(o) For a treatment facility without the means to accurately measure the quantities of chemicals used 2 points shall be assessed. R309-525-11(7)(a)(i).

(p) A water system that does not keep acids and caustics in closed corrosion-resistant shipping containers or storage units 2 points shall be assessed. R309-525-11(11)(a)(i).

(q) For a treatment facility that does not have the vent hose from the feeder to discharge to the outside atmosphere above grade or have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).

(r) For a treatment facility that uses any chemical that is added to water being treated for use in a public water system for human consumption that does not comply with ANSI/NSF Standard 60 25 points shall be assessed. R309-525-11(5).

(s) For a treatment facility that does not have a finished water sampling tap(s) 2 points shall be assessed. R309-525-18.

(t) For a treatment facility that is not performing adequate process control testing consistent with the specific treatment process 30 points shall be assessed. R309-525-19.

(u) For a surface water treatment facility that does not

have continuous residual disinfection equipment to measure continuously measure the residual in mg/L entering the distribution system 20 points shall be assessed. R309-215-10(1).

(v) For a treatment facility without provisions for measuring quantities of chemical used to prepare feed solutions 50 points shall be assessed. R309-525-11(6)(b)(iii).

(w) For a treatment facility without provisions for disposing of empty bags, drums or barrels by an acceptable procedure which will minimize operator exposure to dusts 2 points shall be assessed. R309-525-11(6)(b)(ii).

(x) For a treatment facility which does not provide cross connection control on the make-up waterlines discharging to solution tanks 5 points shall be assessed. R309-525-11(9)(c)(i).

(y) For a treatment facility with overflow pipes that do not have a free fall discharge or are not located where noticeable, 2 points shall be assessed. R309-525-11(8)(b)(v)(A).

(z) For a treatment facility with subsurface locations for solution tanks that are not free from sources of possible contamination 2 points shall be assessed. R309-525-11(8)(b)(iv)(A).

(z1) For a treatment facility with subsurface locations for solution tanks that do not assure positive drainage for ground waters, accumulated water, chemical spills and overflows 2 points shall be assessed. R309-525-11(8)(b)(iv)(B).

(z2) For a treatment facility with a motor driven transfer pump that is not provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank 10 points shall be assessed. R309-525-11(8)(c)(v).

(z3) For a treatment facility without adequate spill containment provisions 2 points shall be assessed. R309-525-11(6)(a)(iv)(B)(v).

(z4) For a treatment facility with acid storage tanks that are not vented to the outside atmosphere with separate screened vents 2 points shall be assessed. R309-525-11(8)(b)(vi).

(z5) For a treatment facility without a means to measure the solution level in the tank 2 points shall be assessed. R309-525-11(8)(b)(ii).

(z6) For a treatment facility without provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water) 5 points shall be assessed. R309-525-23.

(z7) For a treatment facility that does not use of either a volumetric or gravimetric chemical feeder for dry chemicals 2 points shall be assessed. R309-525-11(7)(c)(i).

(z8) For a disinfection facility where cross connection control is not provided on the feed lines to the solution tanks 10 points shall be assessed. R309-520-10(1)(h).

(z9) For a treatment facility that does not have a means to measure water flow rate 10 points shall be assessed.

(z10) For a treatment facility where feed lines are not labeled and color coded for identification 2 points shall be assessed. R309-525-8.

(z11) For a treatment facility which is not secured against unauthorized access shall be assessed 20 points.

(2) Disinfection.

(a) For a disinfection facility without an automatic switch over of chlorine cylinders to assure continuous disinfection 2 points shall be assessed. R309-520-10(2)(a).

(b) For a disinfection facility without scales for weighing cylinders 2 points shall be assessed. R309-520-10(2)(k).

(c) For a disinfection facility without a leak repair kit for 1 ton cylinders 15 points shall be assessed. R309-520-10(2)(p).

(d) For a disinfection facility without respiratory equipment available and stored at a convenient location 5 points shall be assessed. R309-520-10(2)(o).

(e) For a disinfection facility where the chlorine gas feed and storage area is not enclosed and separated from other

operating areas 2 points shall be assessed. R309-520-10(2)(i).

(f) For a disinfection facility which is not heated, lighted or ventilated as necessary to assure proper operation or the equipment and serviceability 2 points shall be assessed. R309-520-10(1)(l).

(g) For a disinfection facility where the chlorination equipment rooms are not vented such that the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures 5 points shall be assessed. R309-520-10(2)(e) (ii).

(h) For a disinfection facility where the chlorination equipment rooms are not vented such that air inlets are through louvers near the ceiling 2 points shall be assessed. R309-520-10(2)(e) (iii).

(i) For a disinfection facility where the chlorination equipment rooms are not vented such that louvers for chlorine room air intake and exhaust facilitate airtight closure 2 points shall be assessed. R309-520-10(2)(e) (iv).

(j) For a disinfection facility where the chlorination equipment rooms are not vented such that separate switches for the fans and lights are outside of the room, at the entrance to the chlorination equipment room and protected from vandalism 2 points shall be assessed. R309-520-10(2)(e) (iv).

(k) For a disinfection facility where the vent hose from the feeder to discharge to the outside atmosphere is not above grade or does not have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).

(l) For a disinfection facility without a bottle of ammonium hydroxide (56%) shall be available for leak detection 2 points shall be assessed. R309-520-10(2)(p).

(m) For a disinfection facility without full and empty cylinders of chlorine gas restrained in position to prevent upset 2 points shall be assessed. R309-520-10(2)(i).

(n) For a disinfection facility with full and empty cylinders of chlorine gas stored in rooms not separated from ammonia storage 2 points shall be assessed. R309-520-10(2)(i).

(o) For a disinfection facility with full and empty cylinders of chlorine gas stored in areas in direct sunlight or exposed to excessive heat 2 points shall be assessed. R309-520-10(2)(i).

(p) For a disinfection facility where the chlorine room is constructed in a manner that any openings between the chlorine room and the remainder of the plant are not sealed 2 points shall be assessed. R309-520-10(2)(h)(ii).

(q) For a disinfection facility utilizing 1 ton cylinders without a means of leak detection available 15 points shall be assessed. R309-520-10(2)(p).

(r) For a disinfection facility without pressure gauges on the inlet and outlets of each chlorine injector 2 points shall be assessed. R309-520-10(2)(b).

(s) For a disinfection facility without cross connection control on the solution feeders into the process units as required in R309-525-11(9)(c) 5 points shall be assessed. R309-525-11(9)(b)(ii).

(t) For a disinfection facility where there is no standby disinfection equipment of sufficient capacity available to replace the largest unit 10 points shall be assessed. R309-520-10(1)(k).

(u) For a disinfection facility where a leak detector is provided and not equipped with both an audible alarm and a warning light 5 points shall be assessed. R309-520-10(2)(p).

(v) For a disinfection facility where the correct reagent is not used for testing free disinfectant residual 2 points shall be assessed. R309-520-15(3).

(w) For a disinfection facility where hypochlorite liquid feeders are not a positive displacement type 10 points shall be assessed. R309-520-10(1)(b).

(x) For a treatment facility where the pre- and post-

chlorination systems are not independent to prevent possible siphoning of partially treated water into the clear well 50 points shall be assessed. R309-525-11(9)(b)(iv).

(y) For a disinfection facility where each tank is not provided with a valved drain or protected against backflow in accordance with R309-11(10)(b) and (c) 2 points shall be assessed. R309-525-11(8)(b)(vii).

(z) For a disinfection facility where overflow pipes are not located where they can be readily monitored 2 points shall be assessed. R309-520-10(1)(g).

(z1) For a disinfection facility where storage and day tanks are not provided with separate vents that terminate to the outside atmosphere 2 points shall be assessed. R309-525-11(8)(b)(vi).

(z2) For a disinfection facility where a means consistent with the nature of the chemical solution is not provided in a day tank to maintain a uniform strength of solution 2 points shall be assessed. R309-525-11(d)(8)(c)(iv).

(z3) For a disinfection facility where any chemical is not conducted from the feeder to the point of application in separate conduit 2 points shall be assessed. R309-525-11(7)(a)(v).

(z4) For a disinfection facility where chemical solution tanks are not kept covered 2 points shall be assessed. R309-525-11(8)(b)(iii).

(z5) For a disinfection facility without disinfectant residual test equipment 2 points shall be assessed. R309-520-10(1)(j).

(z6) For a disinfection facility where there is no means to measure the volume of water treated 2 points shall be assessed. R309-520-10(1)(i).

(z7) For a disinfection facility where provisions are not made for proper storage of sodium chlorite to eliminate any danger of explosion 2 points shall be assessed. R309-525-11(11) (b)(i).

(z8) For a disinfection facility where sodium chlorite is not stored by itself in a separate room and away from organic materials which would react violently with sodium chlorite 2 points shall be assessed. R309-525-11(11) (b)(i)(A).

(z9) For a disinfection facility where sodium chlorite storage structures are not constructed of noncombustible materials 2 points shall be assessed. R309-525-11(11)(a)(b)(i)(B).

(z10) For a disinfection facility where sodium chlorite storage structure is not located in an area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions 2 points shall be assessed. R309-525-11(11) (b)(i)(C).

### (3) Fluoridation.

(a) For a fluoridation facility that does not calculate fluoride concentrations, including chemical dosages and total water quantities, daily 2 points shall be assessed. R309-105-14(2)(a).

(b) For a fluoridation facility where there is not a fail-safe device incorporated in the fluoride feed control system to prevent overfeeding fluoride 30 points shall be assessed. R309-535-5(3).

(c) For a fluoridation facility that uses sodium fluoride, sodium silicofluoride and fluorosilicic acid that does not conform to the applicable AWWA standards or with ANSI/NSF Standard 60 25 points shall be assessed. R309-535-5.

(d) For a fluoridation facility where liquid chemical storage tanks are not equipped with an inverted "J" air vent 2 points shall be assessed. R309-525-11(6)(a)(iv)(c).

(e) For a fluoridation facility where the make-up water is not properly treated for hardness 2 points shall be assessed. R309-535-5(2)(i).

(f) For a fluoridation facility with no provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water) 5 points shall be assessed. R309-525-23.

(g) For a fluoridation facility without a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines 10 points shall be assessed. R309-535-5(2)(f).

(h) For a fluoridation facility with saturators that do not have a flowmeter on the inlet or outlet line 2 points shall be assessed. R309-535-5(2)(l).

(i) For a fluoridation facility without an adequate level of fluoride crystals in the saturator 2 points shall be assessed. R309-525-11(d)(8)(b)(i).

(j) For a fluoridation facility without NIOSH/MSHA certified dust respirator approved for fluoride dust removal as required in R309-525-11(10) for operators handling fluoride compounds 2 points shall be assessed. R309-535-5(4).

(k) For a fluoridation facility without scales, loss-of-weight recorders or liquid level indicators, as appropriate, 2 points shall be assessed. R309-535-5(2)(a).

(l) For a fluoridation facility without deluge showers and eye wash devices 2 points shall be assessed. R309-535-5(4).

(m) For a fluoridation facility without proper personal protective equipment as required in R309-525-11(10) for operators handling fluoride compounds 2 points shall be assessed. R309-535-5(4).

(n) For a fluoridation facility where an overflow from the day tank will not drain by gravity back into the bulk storage tank or a containment system 10 points shall be assessed. R309-525-11(8)(c)(v).

(o) For a fluoridation facility where the saturators are not of the up-flow type 2 points shall be assessed. R309-535-5(2)(l).

### (4) Activated Carbon.

(a) For a treatment facility that does not periodically check media depth against design standards 10 points shall be assessed. R309-525-19.

(b) For a treatment facility that does not have a standard operating practice for the backwash procedure 10 points shall be assessed. R309-525-19.

(c) For a treatment facility that does not provide cross connection control for the in-plant water supply 2 points shall be assessed. R309-525-11(9)(b).

(d) For a treatment facility where the output of any chemical pump is inadequate to supply the required dose rate 2 points shall be assessed. R309-525-11(7)(a)(i).

(e) For a treatment facility where the in plant water supply is inadequate in pressure and quantity 2 points shall be assessed. R309-525-11(9)(a).

(f) For a treatment facility where the vents from feeders, storage facilities and equipment exhaust does not discharge to the outside atmosphere above grade and does not have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).

### (5) Filtration Treatment.

(a) For a filtration facility that does not have equipment for each individual filter to continuously monitor the effluent turbidity 30 points shall be assessed.

(b) For a filtration facility that does not provide a minimum backwash rate of 15 gpm/sf for conventional filters 50 points shall be assessed.

(c) For a filtration facility that does not have the ability to filter to waste (to allow a filter to ripen before introduction finished water into the clearwell) 50 points shall be assessed.

### R309-400-8. Operator Certification.

(1) A water system that is required to have a certified operator and does not shall be assessed 30 points.

(2) A water system where the operator is not certified at the appropriate level shall be assessed 10 points.

(3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-300-

5(5)) certified at the level of the system shall be assessed 5 to 15 points. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level.

(4) A water system where the certified operator does not live within a one hour response time shall be assessed 20 points.

(5) A water system may be credited up to a maximum of 20 points which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

(a) A water system that is not required to have a certified operator and does shall be credited 10 points.

(b) A water system that has operators that are certified at a higher level than required shall be credited 10 points.

(c) A water system that has operators certified in other areas that are not required by that water system, such as treatment or backflow prevention certification, shall be credited 10 points.

#### **R309-400-9. Cross Connection Control Program.**

(1) A water system which does not have any of the below listed components of a cross connection control program in place shall be assessed 50 points.

(2) A water system which only has some of the components of a cross connection control program in place shall be assessed the following number of points:

(a) A water system which does not have local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy) shall be assessed 10 points.

(b) A water system that does not provided public education or awareness material or presentations on an annual basis shall be assessed 10 points.

(c) A water system that does not have an operator with training in the area of cross connection control or backflow prevention shall be assessed 10 points.

(d) A water system with no written records of cross connection control activities, such as, backflow assembly inventory and test history, shall be assessed 10 points.

(e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions) shall be assessed 10 points.

#### **R309-400-10. Drinking Water Source Protection.**

Drinking water source protection (for ground water and surface water sources): Points shall be assessed for each source after a system fails to complete source protection plans as specified in R309-600 and R309-605. The points shall remain until such time as the violation or deficiency no longer exists.

(1) For a water system which has not appointed a designated person for source protection and notified the Division 5 points shall be assessed.

(2) For a water system which does not maintain a current copy of their source protection plan(s) or source assessment(s) on the water system premises 30 points shall be assessed.

(3) For a water system which does not maintain a current inventory of potential contamination sources or susceptibility analysis and determination 10 points shall be assessed.

(4) For a water system which does not maintain current records of land management strategies (such as, ordinances, codes, permits, public education programs, meeting minutes) 10 points shall be assessed.

(5) For a water system with any new sources for which a Preliminary Evaluation Report has not been submitted 150 points shall be assessed. These points shall be included with the points for an unapproved source, not in addition to.

(6) For a water system which has any old sources that have come into use for which a source protection plan has not been submitted 30 points shall be assessed.

(7) For a water system which has reconstructed or redeveloped a water source and has not submitted a revised

source protection plan 20 points shall be assessed.

#### **R309-400-11. Administrative Issues.**

Points in this area shall be assessed at the time that the failure occurs or upon notification of the Executive Secretary and shall remain until the issue is resolved unless otherwise specified.

(1) Administrative Data -

(a) A water system which has not designated a person or organizational official responsible for the system including a current address and phone number shall be assessed 10 points.

(b) A water system project constructed without proper plan approval shall be assessed 1 to 50 points based on an evaluation of the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad). The points assessed shall remain on record for a period of one year.

(2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.

(3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.

(4) Sampling Site Plans:

(a) A water system which does not have an adequate bacteriological sampling site plan shall be assessed 5 points.

(b) A water system which does not have a lead/copper sampling site plan shall be assessed 10 points.

(5) Customer Complaint:

(a) 1 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:

(i) Turbidity;

(ii) Pressure;

(iii) Taste and Odor;

(iv) Sickness (water suspected); and

(v) Waterborne Disease Outbreak (R309-104-9).

(vi) Periods of Water Outage

(b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.

(c) In the case of a documented waterborne disease outbreak the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.

(d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Executive Secretary and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.

(6) Agency Directives - When a directive consistent with the authority of the Drinking Water Board is not complied with 1 to 100 points may be assessed to a water system. Agency directives include but are not limited to the following:

(a) Administrative Orders;

(b) Rule defined action;

(c) Rule defined compliance schedule;

(d) Variance/Exemption requirements; and

(e) Bilateral Compliance Agreement.

Points shall be assessed based upon the severity of the non-compliance, the threat to public health and the underlying basis for the original directive.

(7) Data Falsification - The Executive Secretary may assess a water system points for data falsification. The water system may be assessed 1 to 50 points for each occurrence based upon:

- (a) the severity of the falsification;
  - (b) the threat to public health;
  - (c) the intent of the water system personnel; and
  - (d) the type of falsification.
- (i) Reports only good data
  - (ii) Doctored results from the laboratory
  - (iii) Non-valid sample

Data reported to the Executive Secretary includes but is not limited to Water Treatment Plant Reports, Disinfection Reports, bacteriological and chemical analyses, and Annual Reports.

(8) Water Hauling:

(a) For a community water system that is hauling water as a permanent method of culinary water distribution 150 points shall be assessed.

(b) For a non-community system that is hauling water as a permanent method of culinary water distribution when there is alternate means of supplying quality drinking water 150 points shall be assessed.

(c) For a water system which has been granted an exception to haul water, if any part of the water hauling guidelines are not followed 50 points shall be assessed.

#### **R309-400-12. Reporting and Record Maintenance Issues.**

Points may be assessed for failure to provide required reports to the Executive Secretary by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report 10 points shall be assessed.

(2) Quarterly Repots:

(a) For each failure to report the quarterly disinfection report 10 points shall be assessed.

(3) Annual Reports:

(a) For failure to provide the annual report 2 points shall be assessed.

(b) For a community water system that fails to prepare or distribute a consumer confidence report as required in R309-225 2 points shall be assessed.

**KEY: drinking water, environmental protection, water system rating, administrative procedures**

**March 6, 2007**

**19-4-104**

**Notice of Continuation March 22, 2010**

**63-46b-4**

**R309. Environmental Quality, Drinking Water.****R309-405. Compliance and Enforcement: Administrative Penalty.****R309-405-1. Authority.**

Utah Code Annotated, Sections 19-4-104 and 19-4-109

**R309-405-2. Purpose, Scope, and Applicability.**

(1) This rule sets the criteria and procedures the Board will use in assessing penalties to public drinking water systems for violation of its rules.

(2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.

(3) This rule is applicable to all public drinking water systems.

**R309-405-3. Limits on Authority and Liability.**

Nothing in this rule should be construed to limit the Board's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

**R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.**

(1) Where the Executive Secretary determines that a penalty may be appropriate, the Executive Secretary shall propose a penalty amount by sending a notice of agency action, under Title 63, chapter 46b of the Administrative Procedures Act, to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Executive Secretary within 30 days. The criteria the Executive Secretary will use in establishing a proposed penalty amount shall be as follows:

(a) Major Violations: \$600 to \$1000 per day for each day of violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be: "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. Specific violations that are subject to a major violation category can include the following:

(i) Violations subject to \$1000 per day penalty:

(A) Any violation defined by R309-220-5 which would trigger a Tier 1 public notification.

(B) Not having any elements of a source protection plan as required in R309-600 for ground water sources and R309-605 for surface water sources.

(C) Failure to respond to an Administrative Order issued by the Drinking Water Board.

(D) Introduction by the water system of a source water that has not been evaluated and approved for use as a public drinking water source under R309-515.

(E) Construction or use of an interconnection to another public water system which has not been reviewed and approved in accordance with R309-550-9.

(F) Having over 20 IPS points (Improvement Priority System points based on R309-400, the Water System Rating Criteria) specifically for operating pressures below that required by R309-105-9.

(G) Having 50 IPS points specifically for an inadequate well seal as required in R309-515.

(H) Having over 50 IPS points (not including the deficiencies in (F) and (G) above) specifically assessed in the physical facility section of an IPS report.

(I) Use of a surface water source without proper filtration treatment in accordance with R309-525 or 530.

(J) Exceeding the rated water treatment plant capacity as determined by review under R309-525 or 530.

(K) Insufficient disinfection contact time as evaluated under R309-215-7.

(ii) Violations subject to \$800 per day penalty:

(A) Not having any of the required components of a cross connection control program in place as required by R309-105-12.

(B) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(iii -iv) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(b) Moderate Violations: \$400 to \$600 per day for each day of violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. Specific violations that are subject to a moderate violation category can include the following:

(i) Violations subject to \$600 penalty:

(A) Any violation defined by R309-220-6 which would trigger a Tier 2 public notification.

(B) Having a disapproved status on a source protection plan (R309-600 and 605) for a period longer than 90 days.

(C) Installation or use of disinfection equipment that has not been evaluated and approved for use under R309-520.

(D) Having measured turbidity spikes of greater than 0.5 or 1.0 NTU in two consecutive fifteen minute readings as defined in R309-215-9(4)(b)(i) or (ii) respectively.

(E) Insufficient source capacity, storage capacity, or delivery capacity as established by review of the system design under R309-500 through 550.

(F) Not complying with plan approval requirements as set forth in R309-500. The term infrastructure can include the disinfection process, surface water treatment process, and physical facilities such as water treatment plants, storage reservoirs, sources and distribution piping.

(c) Minor Violations: Up to \$400 per day for each day of violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. Specific violations that are subject to a minor violation category can include the following:

(i) Violations subject to \$400 per day penalty:

(A) Any violation defined by R309-220-7 which would trigger a Tier 3 public notification or a violation of the monitoring requirements of R309-515-4(5), except for turbidity monitoring for surface water treatment facilities and violations termed as minor monitoring as outlined in R309-400-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(B) Failure to upgrade a Preliminary Evaluation Report for a source protection plan as required in R309-600 and 605.

(C) Failure to update a source protection plan as required in R309-600 and 605.

(D) Construction or use of a storage reservoir that has not been evaluated for use under R309-545.

(ii) Violations subject to \$200 per day penalty:

(A) Lacking individual components of a cross connection control program as required by R309-105-12.

(B) Not having a certified operator on staff as required in R309-300-5(10) after 1 year or 4 operator certification exam cycles.

(C) Any minor monitoring violation as defined by R309-400-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(D) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(i-ii) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(2) The Executive Secretary will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty to the Board by requesting a formal hearing under R309-115 and the Utah Administrative Procedures Act within 30 days of the date of assessment of the penalty.

#### **R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.**

The Executive Secretary, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the violation and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew, or should have known, of the legal requirements which were violated, and degree of recalcitrance.

(3) The number of days of non compliance

(4) Public sensitivity. The actual impact of the violation(s) that occurred.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

#### **R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.**

The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

(1) Payment of the penalty may be extended based on a person or organization's inability to pay. This should be distinguished from an unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) In circumstances where there is a demonstrated financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.

(3) In some cases, the Executive Secretary may allow the violator to satisfy the penalty by completing a Supplemental Environmental Project (SEP) approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:

(a) The project must be in addition to all regulatory compliance obligations;

(b) The project must relate to some or all of the issues of the violation;

(c) The project must primarily benefit the drinking water users;

(d) The project must be defined, measurable and have a beginning and ending date;

(e) The project must be agreed to in writing between the public water system and the Executive Secretary;

(f) The project must not generate the public perception favoring violations of the laws and rules.

#### **R309-405-7. Penalty Policy for Civil Proceedings.**

Pursuant to Utah Code Annotated Section 19-4-109(2)(b), any person who willfully violates any rule or order made or issued pursuant to the Utah Safe Drinking Water Act, Utah Code Annotated Section 19-4-101 et seq, is subject to a civil penalty of not more than \$5000 per day for each day of violation. The Board and Executive Secretary shall apply the provisions of R309-405-4, 5, and 6 in pursuing or resolving willful violations except that the penalty range per day for each day of violation for major violations shall be \$3000 to \$5,000, for moderate violations shall be \$2000 to \$3000, and for minor violations shall be up to \$2000.

**KEY: drinking water, environmental protection, administrative procedures, penalties**

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**19-4-104**

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**R309. Environmental Quality, Drinking Water.**  
**R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.**  
**R309-500-1. Purpose.**

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-500-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-500-3. Definitions.**

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

**R309-500-4. General.**

(1) Construction and Operation of New Facilities.

As authorized in 19-4-106(3) of the Utah Code, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction.

Plans and specifications and a business plan as required by R309-800-5, along with a completed project notification form, shall be submitted to the Executive Secretary for any new water systems or previously un-reviewed water systems unless acceptable data can be presented that the proposed or existing water system will not become a "public water system" as defined in 19-4-102 of the Utah Code or in R309-110.

Construction of new facilities for public water systems or existing facilities of previously un-reviewed public drinking water systems shall conform to rules R309-500 through R309-550; the "Facility Design and Operation" rules. There may be times in which the requirements of the Facility Design and Operation rules are not appropriate. Thus, the Executive Secretary may grant an "exception" to the Facility Design and Operation rules if it can be shown that the granting of such an exception will not jeopardize the public health.

Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary unless waivers have been issued as allowed by R309-500-6(3). This approval shall be referred to as the Plan Approval.

Furthermore, no new public drinking water facility shall be put into operation until written approval to do so has been given by the Executive Secretary or this requirement waived. This approval is referred to as the Operating Permit.

(2) Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water which meets the minimum current standard of drinking water quantity and quality requirements. The Executive Secretary may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance of Existing Facilities.

Public drinking water system facilities shall be operated and maintained in a manner which protects the public health.

As a minimum, the operation and maintenance procedures of R309-500 through R309-550 shall be adhered to.

**R309-500-5. Public Drinking Water Project.**

(1) Definition.

A public drinking water project, requiring the submittal of a project notification form along with plans and specifications, is any of the following:

(a) The construction of any facility for a proposed drinking water system (see 19-4-106(3) of the Utah Code or R309-500-4(1) above describing the authority of the Executive Secretary).

(b) Any addition to, or modification of, the facilities of an existing public drinking water system which may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, which may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the "in-situ" re-lining of any pipeline,

(iii) a change or addition of any primary coagulant water treatment chemical (excluding filter, flocculent or coagulant aids) when the proposed chemical does not appear on a list of chemicals pre-approved by the Executive Secretary for a specific treatment facility, and

(iv) the re-development of any spring or well source or replacement of a well pump with one of different capacity.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all operation and maintenance requirements contained in R309-500 through R309-550 and specifically the disinfection, flushing and bacteriological sampling and testing requirements of ANSI/AWWA C651-05 for pipelines, ANSI/AWWA C652-02 for storage facilities, and ANSI/AWWA C654-03 for wells before they are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline or the new segment is upgraded to meet the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3),

(c) tapping existing water mains with corporation stops so as to make connection to new service laterals to individual structures,

(d) distribution pipeline additions where the pipeline size is the same as the main supplying the addition or the pipeline addition meets the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(e) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(f) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

**R309-500-6. Plan Approval Procedure.**

(1) Project Notification.



The Division shall be notified prior to the construction of any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made by the management of the regulated public water system on a form provided by the Division. Information required by this form shall be determined by the Division and may include:

- (a) whether the project is for a new or existing public drinking water system,
- (b) the professional engineer, registered in the State of Utah, designing the project and his/her experience designing public drinking water projects within the state,
- (c) the individual(s) who will be inspecting the project during construction and whether such inspection will be full-time or part time,
- (d) whether required approvals or permits from other governmental agencies (e.g. local planning commissions, building inspectors, Utah Division of Water Rights) are awaiting approval by the Executive Secretary, the agency's name and contact person,
- (e) the fire marshal, fire district or other entity having legal authority to specify requirements for fire suppression in the project area,
- (f) for community and non-transient non-community public water systems or any public water system treating surface water, the name of the certified operator who is, or will be, in direct responsible charge of the water system,
- (g) whether the water system has a registered professional engineer employed, appointed or designated as being directly responsible for the entire system design and his or her name and whether the system is requesting waiving of plan submittal under conditions of R309-500-6 (3),
- (h) the anticipated construction schedule, and
- (i) a description of the type of legal entity responsible for the water system (i.e. corporation, political subdivision, mutual ownership, individual ownership, etc.) and the status of the entity with respect to the rules of the Utah Public Service Commission.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project commences:

- (a) Contract documents, plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired unless the system is eligible for and has requested waiving of plan submittal. Any submittal shall include engineering reports, pipe network hydraulic analyses, water consumption data, supporting information, evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, along with a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service.
- (b) Plans and specifications shall be prepared for every anticipated public water system project. The design utilized shall conform to the requirements of R309-500 through R309-550. Furthermore, the plans and specification shall be sufficiently detailed to assure that the project shall be properly constructed. Drawings shall be compatible with Division's document storage and microfilming practice. Drawings which are illegible or of unusual size shall not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".
- (c) The plans and specifications shall be stamped and signed by a licensed professional engineer in accordance with Section 58-22-602(2) of the Utah Code.
- (d) Plans and specifications shall be reviewed for conformance with R309-500 through R309-550. No work shall commence on a public water system project until a plan

approval has been issued by the Executive Secretary unless conditions outlined in R309-500-6(3) are met and waiving of plan submittal has been requested. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(e) If, in the judgment of the Executive Secretary, alternate designs or specific solutions can protect the public health to the same or greater extent as achieved in R309-500 through R309-550, the Executive Secretary may grant an exception thereto (see the third paragraph of R309-500-4(1)).

(f) Novel equipment or treatment techniques may be developed which are not specifically addressed by these rules. These may be accepted by the Executive Secretary if it can be shown that:

- (i) the technique will produce water meeting the requirements of R309-200 of these rules,
- (ii) the Executive Secretary has determined that it will protect public health to the same extent provided by comparable treatment processes outlined in these rules, and
- (iii) the Executive Secretary has determined the technique is as reliable as any comparable treatment process outlined in these rules.

(3) Waiving of Plan Submittal Requirement.

With identification of a professional engineer, as indicated below, on a project notification form the plan submittal requirement may be waived for certain projects. In these instances, in lieu of plans and specifications, a "certification of rule conformance" shall be submitted along with the additional information required for an operating permit (see R309-500-9), signed by the professional engineer identified to Executive Secretary in (b) or, if the system has not employed, appointed, or designated such, the registered professional engineer who prepared the items in (a). Projects eligible for this waiving of plan submittal are:

- (a) distribution system improvements (excluding pressure reducing valve stations and in-line booster pump stations) which conform to a "master plan" previously reviewed and approved by the Executive Secretary and installed in accordance with the system's standard installation drawings, also previously reviewed and approved by the Executive Secretary, or
- (b) distribution system improvements consisting solely of pipelines and pipeline appurtenances (excluding pressure reducing valve stations and in-line booster pump stations);
  - (i) less than or equal to 4 inches in diameter in water systems (without fire hydrants) serving solely a residential population less than 3,300;
  - (ii) less than or equal to 8 inches in diameter in water systems (with fire hydrants) providing water for mixed use (commercial, industrial, agricultural and/or residential) to a population less than 3,300;
  - (iii) less than or equal to 12 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population between 3,300 and 50,000;
  - (iv) less than or equal to 16 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population greater than 50,000.

Additionally, the above systems in (b) shall employ, appoint or designate a registered professional engineer who is directly responsible for the entire public water system design and identify this individual to the Executive Secretary as well as have standard installation drawings previously reviewed and approved by the Division before being eligible for waiving of plan submittal requirements.

**R309-500-7. Inspection During Construction.**

Staff from the Division, or the appropriate local health department, after reasonable notice and presentation of credentials may make visits to the work site to assure

compliance with these rules.

**R309-500-8. Change Orders.**

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Executive Secretary. If deemed appropriate, the Executive Secretary may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the Division in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

**R309-500-9. Issuance of Operating Permit.**

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be used until an "Operating Permit" is issued, in writing, by the Executive Secretary. This permit shall not be issued until all of the following items are submitted and found to be acceptable for all projects with the exception of distribution lines (including in-line booster pump stations or pressure reducing stations), which may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Executive Secretary, has received items (1) and (4):

- (1) a statement from a registered professional engineer that all conditions of Plan Approval were accomplished ("certification of rule conformance"),
- (2) as-built "record" drawings; unless no changes are made from previously submitted and approved plans during construction,
- (3) confirmation that a copy of the as-built "record" drawings has been received by the water system owner,
- (4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,
- (5) where appropriate, water quality data
- (6) a statement from the Engineer indicating what changes to the project were necessary during construction, and certification that all of these changes were in conformance with these rules ("certification of rule conformance"),
- (7) all other documentation which may have been required during the plan review process, and
- (8) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility.

**R309-500-10. Adequacy of Wastewater Disposal.**

Plans and specifications for new water systems, or facilities required as a result of proposed subdivision additions to existing water systems, shall only be approved if the method(s) of wastewater disposal in the affected area have been approved, or been determined to be feasible, by the Utah Division of Water Quality or the appropriate local health agency.

**R309-500-11. Financial Viability.**

Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the system will not generate sufficient funds to insure proper operation and maintenance of the system (see also R309-352-5).

**R309-500-12. Fee Schedule.**

The Division may charge a fee for the review of plan and specifications. A fee schedule is available from the Division.

**R309-500-13. Other Permits.**

Local, county or other state permits may also be necessary before beginning construction of any drinking water project.

**R309-500-14. Reference Documents.**

All references made in R309-500 through R309-550 are available for inspection at the Division's office.

**R309-500-15. Violations of These Rules.**

Violations of rule contained in R309-500 through R309-550 are subject to the provisions of the Utah Safe Drinking Water Act (Title 19, Chapter 4 Section 109 of the Utah Code) and may be subject to fines and penalties.

**KEY: drinking water, plan review, operation and maintenance requirements, permits**

**May 12, 2009**

**19-4-104**

**Notice of Continuation March 22, 2010**

**R309. Environmental Quality, Drinking Water.****R309-505. Facility Design and Operation: Minimum Treatment Requirements.****R309-505-1. Purpose.**

This rule specifies the type and degree of treatment which must be applied to the various types of water sources found in Utah. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water consistently meeting applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-505-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-505-3. Definitions.**

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

**R309-505-4. Pre-design Consultation.**

The type and degree of treatment which shall be given a public drinking water source depends upon the nature of the source and the chemical and biological characteristics of the water it produces. Prior to the design of any water treatment facility, the Executive Secretary shall be consulted and concur that the contemplated treatment method is appropriate for the source being treated.

**R309-505-5. Drinking Water Quality Standards.**

Drinking water provided for human consumption by public drinking water systems must meet all water quality standards as specified in R309-200. Sources of water which do not meet applicable standards, or may not meet such standards due to the proximity of contamination sources, shall be appropriately treated as specified herein or physically disconnected from the drinking water system.

**R309-505-6. Surface Water Sources.****(1) Determination of Surface Water Source.**

A surface water source is any water source which rests or travels above ground for any period of time. Such sources include rivers, streams, creeks, lakes, reservoirs, ponds or impoundments.

**(2) Treatment of a Surface Water Source.**

(a) As a minimum, surface water sources shall be given complete treatment as specified in R309-525 or R309-530.

**(b) All surface waters shall be treated to assure:**

(i) at least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer;

(ii) at least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer; and

(iii) removal of substances, as needed, to comply with the quality requirements of R309-200.

(c) A public water system using a surface water source is considered to be in compliance with the requirements in subsection (b), above, if the treatment technique utilized produces water meeting the quality provisions of R309-200, provided that all monitoring required by R309-215 has been

accomplished.

**R309-505-7. Low Quality Ground Water Sources.****(1) Determination of a Low Quality Ground Water Source.**

(a) A low quality ground water source is any well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-200. A water source shall be deemed to be a low quality ground water source if any of the following conditions exist:

(i) It is determined by the Executive Secretary that the source is Ground Water Under the Direct Influence of Surface Water.

(A) Classification of existing ground water sources, as to whether or not they are under direct influence of surface water, shall be made by the Executive Secretary.

(B) Frequent monitoring of turbidity, temperature, pH and conductivity of source water, in conjunction with similar monitoring of nearby surface waters may, if properly documented, provide sufficient evidence that the source is not influenced.

(C) Classification of existing sources shall be based upon evaluation of part or all of the following:

(I) Records review; including review of plans and specifications used for construction of collection facilities as submitted for review and approval prior to construction; review of as-built plans as submitted after construction, especially where springs are concerned; review of previous sanitary surveys; and review of any system bacteriological violations which may be linked directly to a source.

(II) Results of written survey form.

(III) On-site inspection by Division personnel.

(IV) Special tests such as Microscopic Particulate Analysis (MPA), dye tracer studies, or time of travel studies done in conjunction with the source protection program. Because of critical timing for tests such as the MPA, accelerated monitoring and reporting of water characteristics as mentioned in R309-505-7 (1)(a)(i)(B) above, may be required prior to MPA sampling.

(b) Testing for microbiological, chemical or radiologic contaminants determines that the drinking water quality requirements of R309-200 cannot be reliably or consistently met.

(c) The location, design or construction of the well or spring makes it, in the judgement of the Executive Secretary, susceptible to natural or man-caused contamination.

**(2) Treatment of a Low Quality Ground Water Source.**

Low quality ground water sources shall be treated to assure that all chemical and biological contaminants are reduced to the levels which are reliably and consistently below MCL's prescribed in R309-200. If a source is determined to be ground water under the direct influence of surface water the following is required:

(a) Upon determination that a ground water source is under the direct influence of surface water, conventional surface water treatment, as specified in R309-525, or an approved equivalent, as specified in R309-530, shall be installed within 18 months or the source must be abandoned as a source of drinking water and physically disconnected from the drinking water system.

(b) Systems which must retain use of ground water sources classified as under direct influence of surface water shall start disinfection immediately on those sources and monitor in accordance with residual disinfectant monitoring under treatment plant monitoring and reporting found in R309-215- as well as maintain satisfactory "CT" values in accordance with R309-200-5(7) during the 18 month interim period before conventional surface water treatment, or an approved equivalent, is installed. Chlorine, chlorine dioxide, chloramine,

and ozone are considered capable of attaining required levels of disinfection.

(c) Once a ground water source is classified as under the influence of surface water, it must be considered to be a surface water source. Thus, all requirements in these rules which pertain to surface water sources also pertain to ground water under the direct influence of surface water.

**R309-505-8. High Quality Ground Water Sources.**

(1) Determination of a High Quality Ground Water Source.

A well or spring shall be deemed to be a high quality ground water source if the following conditions are met:

(a) The design and construction of the source are in conformance with these rules.

(b) Testing establishes that all applicable drinking water quality standards, as given in R309-200, are met, and can be expected to be met in the future.

(c) The source is not susceptible to natural or man-caused contamination and, furthermore, adequate protection zones and management areas have been established in accordance with R309-600.

(2) Treatment of a High Quality Ground Water Source.

A high quality ground water source requires no treatment.

**R309-505-9. Best Available Technologies (BATs).**

EPA has identified Best Available Technologies (BATs) in national regulations regarding drinking water. BATs include Activated Alumina, Coagulation/Filtration, Direct Filtration, Diatomite Filtration, Electrodialysis Reversal, Corrosion Control, Granulated Activated Carbon, Ion Exchange, Lime Softening, Reverse Osmosis, Polymer Addition and Packed Tower Aeration. Where a BAT is used to reduce the concentration of a contaminant:

(a) the requirements of R309-500 through R309-550 shall govern if the BAT is included in these rules.

(b) if the BAT is not included in R309-500 through R309-550, review of plans and specifications for a project will be governed by R309-530-9, New Treatment Processes or Equipment.

**R309-505-10. Temporary Use of Bottled Water.**

Initially the use of bottled water may be allowed on a temporary basis by the Executive Secretary. The continued use of bottled water shall be reviewed at least annually and only allowed after the Executive Secretary is satisfied that the PWS has made reasonable attempts since the last review to provide acceptable water on a more permanent basis without success.

**KEY: drinking water, surface water treatment, low quality ground water, high quality ground water**  
September 13, 2005  
Notice of Continuation March 22, 2010

19-4-104

**R309. Environmental Quality, Drinking Water.**  
**R309-510. Facility Design and Operation: Minimum Sizing Requirements.**

**R309-510-1. Purpose.**

This rule specifies requirements for the sizing of public drinking water facilities such as sources (along with their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-510-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-510-3. Definitions.**

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

**R309-510-4. General.**

This rule provides estimates of quantities and flow rates which shall be used in the design of new systems, or if there is an absence of data collected by the public water system meeting the required confidence level for a reduction mentioned below, when evaluating water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.

**R309-510-5. Reduction of Requirements.**

If acceptable data are presented, certain number of days of peak day demand to establish minimum source capacity; certain number of years of annual demand to establish minimum water right requirements; and certain number of readings of peak hourly demand to establish minimum peak instantaneous demand; showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced to the 90th percentile of readings, on a case by case basis by the Executive Secretary. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced. The Executive Secretary may re-consider any reduced minimums if the nature and use of the system changes.

**R309-510-6. Water Conservation.**

This rule is based upon typical current water consumption patterns in the State of Utah. They may be excessive in certain settings where legally enforceable water conservation measures exist. In these cases the requirements made in this section may be reduced on a case-by-case basis by the Executive Secretary.

**R309-510-7. Source Sizing.**

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the

anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 510-1 and 510-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 510-1  
Source Demand for Indoor Use

Type of Connection	Peak Day Demand	Average Yearly Demand
Year-round use		
Residential	800 gpd/conn	146,000 gal./conn
ERC	800 gpd/ERC	146,000 gal./ERC
Seasonal/Non-residential use		
Modern Recreation Camp	60 gpd/person	(see note 1)
Semi-Developed Camp		
a. with pit privies	5 gpd/person	(see note 1)
b. with flush toilets	20 gpd/person	(see note 1)
Hotel, Motel, and Resort	150 gpd/unit	(see note 1)
Labor Camp	50 gpd/person	(see note 1)
Recreational Vehicle Park	100 gpd/pad	(see note 1)
Roadway Rest Stop	7 gpd/vehicle	(see note 1)
Recreational Home Development	400 gpd/conn	(see note 1)

Note 1. Annual demand shall be based on the number of days the system will be open during the year times the peak day demand unless data acceptable to the Division, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented.

TABLE 510-2  
Source Demand for Individual Establishments<sup>(a)</sup>  
(Indoor Use)

Type of Establishment	Peak Day Demand (gpd)
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50
b. for each nonresident boarders	10
Bowling Alleys, per alley	
a. with snack bar	100
b. with no snack bar	85
Churches, per person	5
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds, per person	1
Fire Stations, per person	
a. with full-time employees and food prep.	70
b. with no full-time employees and no food prep.	5
Gyms	
a. per participant	25
b. per spectator	4
Hairdresser	
a. per chair	50
b. per operator	35
Hospitals, per bed space	250
Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste)	
a. with showers	35
b. with no showers	15
Launderette, per washer	580
Movie Theaters	
a. auditorium, per seat	5
b. drive-in, per car space	10
Nursing Homes, per bed space	280
Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only)	
a. with cafeteria	25
b. with no cafeteria	15
Picnic Parks, per person (toilet wastes only)	5
Restaurants	

a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Rooming House, per person	40
Schools, per person	
a. boarding	75
b. day, without cafeteria, gym or showers	15
c. day, with cafeteria, but no gym or showers	20
d. day, with cafeteria, gym and showers	25
Service Stations <sup>(b)</sup> , per vehicle served	10
Skating Rink, Dance Halls, etc., per person	
a. no kitchen wastes	10
b. Additional for kitchen wastes	3
Ski Areas, per person (no kitchen wastes)	10
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses <sup>(c)</sup> , per person	10
Taverns, Bars, Cocktail Lounges, per seat	20
Visitor Centers, per visitor	5

6 4.90 3.26

(4) Accounting for Variations in Source Yield.

The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flowrate shall be used in determining the number of connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Executive Secretary may grant an exception to this requirement.

**R309-510-8. Storage Sizing.**

(1) General.

Each storage facility shall provide:

- (a) equalization storage volume, to satisfy average day demands for water for indoor use as well as outdoor use,
- (b) fire suppression storage volume, if the water system is equipped with fire hydrants and intended to provide fire suppression water, and
- (c) emergency storage, if deemed appropriate by the water supplier or the Executive Secretary, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures.

(2) Equalization Storage.

- (a) All public drinking water systems shall be provided with equalization storage. The amount of equalization storage which must be provided varies with the nature of the water system, the extent of outdoor use and the location of the system.
- (b) Required equalization storage for indoor use is provided in Table 510-4. Storage requirements for non-community systems not listed in this table shall be determined by calculating the average day demands from the information given in Table 510-2.

NOTES FOR TABLE 510-2:

1. Source capacity must at least equal the peak day demand of the system. Estimate this by assuming the facility is used to its maximum.
2. Generally, storage volume must at least equal one average day's demand.
3. Peak instantaneous demands may be estimated by fixture unit analysis as per Appendix E of the 2006 International Plumbing Code.
  - (a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.
  - (b) or 250 gpd per pump,
  - (c)  $20 \times \{\text{Water Area (Ft}^2\text{)} / 30\} + \text{Deck Area (Ft}^2\text{)}$

(3) Estimated Outdoor Use.

In the absence of firm water use data, Table 510-3 shall be used to estimate the peak day demand and average yearly demand for outdoor water use. The following procedure shall be used:

- (a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).
- (b) Determine the net number of acres which may be irrigated. This is generally done by starting with the gross acreage, then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots. Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Division shall be consulted and agree that the land in question will not be irrigated.
- (c) Refer to Table 510-3 to determine peak day demand and average yearly demand for outdoor use.
- (d) The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.

TABLE 510-3  
Source Demand for Irrigation  
(Outdoor Use)

Map Zone	Peak Day Demand (gpm/irrigated acre)	Average Yearly Demand (AF/irrigated acre)
1	2.26	1.17
2	2.80	1.23
3	3.39	1.66
4	3.96	1.87
5	4.52	2.69

TABLE 510-4  
Storage Volume for Indoor Use

Type	Volume Required (gallons)
Community Systems	
Residential;	
per single resident service connection	400
Non-Residential;	
per Equivalent Residential Connection (ERC)	400
Non-Community Systems	
Modern Recreation Camp; per person	30
Semi-Developed Camp; per person	
a. with Pit Privies	2.5
b. with Flush Toilets	10
Hotel, Motel and Resort; per unit	75
Labor Camp; per unit	25
Recreational Vehicle Park; per pad	50
Roadway Rest Stop; per vehicle	3.5
Recreational Home Development; per connection	400

- (c) Where the drinking water system provides water for outdoor use, such as the irrigation of lawns and gardens, the equalization storage volumes estimated in Table 510-5 shall be added to the indoor volumes estimated in Table 510-4. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in Section R309-510-7(3).

TABLE 510-5  
Storage Volume for Outdoor Use

Map Zone	Volume Required (gallons/irrigated acre)
1	1,782
2	1,873
3	2,528
4	2,848
5	4,081
6	4,964

(3) Fire Suppression Storage.

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Executive Secretary may require emergency storage when it is warranted to protect public health and welfare.

**R309-510-9. Distribution System Sizing.**

(1) General Requirements.

The distribution system shall be designed to insure that minimum water pressures as required in R309-105-9 exist at all points within the system. If the distribution system is equipped with fire hydrants, the Division will require a letter from the local fire authority stating the fire flow and duration required of the area to insure the system shall be designed to provide minimum pressures as required in R309-105-9 to exist at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$$Q = 10.8 \times N^{0.64}$$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	Q = 4N
60 to 239	Q = 80 + 20N <sup>0.5</sup>
240 or greater	Q = 1.6N

NOTES FOR TABLE 510-6:

Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only water use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in Appendix E of the 2006 International Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in Appendix E of the 2006 International Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in Section R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for Outdoor Use

Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92

5  
6

9.04  
9.80

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm unless the local planning commission provides a letter indicating that the system will not be required to provide any fire flows, in which case fire hydrants will not be allowed to be installed on any mains.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that minimum pressures required by R309-105-9 exist at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.

**KEY: drinking water, minimum sizing, water conservation  
April 27, 2009  
Notice of Continuation March 22, 2010**

19-4-104

**R309. Environmental Quality, Drinking Water.****R309-511. Hydraulic Modeling Requirements.****R309-511-1. Purpose.**

The purpose of this rule is to ensure that the increased water demand created by new construction will not adversely affect existing or new water users. This purpose will be accomplished by requiring the public water system or its agent to evaluate the water delivery system using a hydraulic model and certify to the Division that the project will not adversely impact the system. It is intended that the public water system or its agent will use the findings of the hydraulic model to design improvements providing satisfactory service to both existing and new water users. This rule requires the public water system or its agent to certify that the design meets minimum flow requirements of R309-510 and pressure requirements as set forth in rule R309-105-9.

**R309-511-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-511-3. Definitions.**

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

"The public water system or its agent" is the individual responsible for signing the certification and preparing the Hydraulic Modeling Design Elements Report. This individual shall be a registered professional engineer, licensed to practice in the State of Utah.

**R309-511-4. General.**

## (1) Rule Applicability.

(a) This rule applies to public drinking water systems categorized as community water systems as defined by rule R309-100-4(2) and to non-transient non-community water systems that have system demands higher than required by R309-510 or with demands for fire suppression. All public drinking water systems are still required to comply with R309-550-5 with respect to water main design which may require a hydraulic analysis. Further, Certifications as defined by this rule, shall be part of the submission of plans for any public drinking water project as defined in rule R309-500-5(1), except projects that meet one of the following criteria:

(i) Public drinking water projects that will not result in negative hydraulic impact, such as, but not limited to,

(A) addition of new sources in accordance with R309-515.

(B) adding disinfection, fluoridation, or other treatment facilities that do not adversely impact flow, pressure or water quality.

(C) storage tank repair or recoating.

(D) water main additions with no expansion of service (i.e. looping lines).

(E) adding transmission lines to storage or sources without adding service connections.

(F) adding pump station(s) from source or storage upstream of distribution service connections.

(G) public drinking water projects that have negligible hydraulic impact as determined by the Executive Secretary.

(ii) Public drinking water projects that are a part of a planned phase of a master plan previously approved by the Executive Secretary per R309-500-6(3)a.

(iii) The water system maintains and updates a hydraulic model of the system, and has designated a professional engineer responsible for overseeing the hydraulic analysis in meeting the requirements of R309-511 in writing to the Executive Secretary.

(iv) The water system has a means that is deemed

acceptable by the Executive Secretary to gather real time data indicative of hydraulic conditions in model scenarios of R309-511-5(9), and the real time data shows the system is capable of meeting the flow and pressure requirements for the additional demands placed on the existing system.

(b) A public water system must clearly identify the reason in the plan submittal if it wishes to demonstrate that R309-511 does not apply to a new construction project. In some cases, supporting documentation may be needed.

(c) If there are existing deficiencies in the water system, the Executive Secretary may allow a new construction project to proceed in accordance with the plan review requirements in R309-500 through 550 as long as the public water system demonstrates that the new construction project is located in a hydraulically separated area and does not adversely impact the existing deficiencies, or does not create new deficiencies within the water system.

## (2) Rule Elements.

The public water system or its agent, in connection with the submission of plans and specifications to the Executive Secretary, shall perform the following:

(a) Conduct a hydraulic modeling evaluation consistent with the requirements as set forth in this rule and R309-510. This model shall include either the entire public drinking water system or the specific areas affected by the new construction if hydraulically separated areas exist within the water system.

(b) Calibrate the model using field measurements and observations.

(c) Certify in writing to the Executive Secretary that the design complies with the sizing requirements of R309-510 and the minimum water pressures of R309-105-9.

(d) Prepare and submit a Hydraulic Model Design Elements Report (see R309-511-7).

(f) Prepare a System Capacity and Expansion Report if required (see R309-511-8).

**R309-511-5. Requirements for the Hydraulic Model.**

The following minimum requirements must be incorporated into hydraulic models constructed to meet these requirements:

(1) Include at least 80 percent of the total pipe lengths in the distribution system affected by the proposed project.

(2) Account for 100 percent of the flow in the distribution system affected by the proposed project. Water demand allocation must account for at least 80 percent of the flow delivered by the distribution system affected by the proposed project if customer usage in the system is metered.

(3) Include all 8-inch diameter and larger pipes. Pipes smaller than 8-inch diameter should also be included if they connect pressure zones, storage facilities, major demand areas, pumps, and control valves, or if they are known or expected to be significant conveyers of water such as fire suppression demand. Model piping does not need to include service lateral piping.

(4) Include all pipes serving areas at higher elevations, dead ends, remote areas of a distribution system, and areas with known under-sized pipelines.

(5) Include all storage facilities and accompanying controls or settings applied to govern the open/closed status of the facility that reflect standard operations.

(6) If applicable, include all pump stations, drivers (constant or variable speed), and accompanying controls or settings applied to govern their on/off/speed status that reflect various operating conditions and drivers.

(7) Include all control valves or other system features that could significantly affect the flow of water through the distribution system (i.e. interconnections with other systems, pressure reducing valves between pressure zones) reflecting various operating conditions.



(8) Impose peak day and peak instantaneous demands to the water system's facilities. These demands may be peak day and peak instantaneous demands per R309-510, the reduced demand approved by the Executive Secretary per R309-510-5, or the demands experienced by the water system which are higher than the values listed in R309-510. This may require multiple model simulations to account for the varying water demand conditions. In some cases, extended period simulations are needed to evaluate changes in operating conditions over time. This will depend on the complexity of the water system, extent of anticipated fire event and nature of the new expansion.

(9) Calibrate the model to adequately represent the actual field conditions using field measurements and observations.

(10) If fire hydrants are connected to the distribution system, account for fire suppression requirements specified by local fire authority or use the default values stated in R309-510-9(4). For significant fire suppression demand, extended simulations must contain the run time for the period of anticipated fire event. In some cases, a steady state model may be sufficient for residential fire suppression demand.

(11) Account for outdoor use, such as irrigation, if the drinking water system supplies water for outdoor use.

#### **R309-511-6. Elements of the Public Water System or Its Agent's Certification.**

(1) The public water system or its agent's certification.

The Division relies upon the professional judgment of the registered professional engineer who certifies that the hydraulic analysis and evaluation have been done properly and that the flow and pressure requirements have been met. The public water system or its agent shall, after a thorough review, submit a document to the Executive Secretary certifying that the following requirements have been met:

(a) The hydraulic model requirements as set forth in rule R309-511-5.

(b) The appropriate demand requirements as specified in this rule and rule R309-510 have been used to evaluate various operating conditions of the public drinking water system.

(c) The hydraulic model predicts that new construction will not result in any service connection within the new expansion area not meeting the minimum distribution system pressures as specified in R309-105-9.

(d) The hydraulic model predicts that new construction will not decrease the pressures within the existing water system to such that the minimum distribution system pressures as specified in R309-105-9 are not met.

(e) The calibration methodology is described and the model is sufficiently accurate to represent conditions likely to be experienced in the water delivery system.

(f) Identify the hydraulic modeling method, and if computer software was used, the software name and version used.

(2) The format of the public water system or its agent's submission.

The public water system or its agent shall submit to the Executive Secretary the following documentation:

(a) The certification as required in R309-511-6(1). The certification shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

(b) A Hydraulic Model Design Elements Report (see R309-511-7). The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

(c) For community public water systems, the water system management shall certify that they have received a copy of input and output data for the hydraulic model with the simulation showing the worst case results in terms of water system pressure and flow.

(3) The submission of supporting documentation.

The public water system or its agent shall submit a System Capacity and Expansion Report (see R309-511-8) if requested by the Executive Secretary. The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

#### **R309-511-7. Hydraulic Model Design Elements Report.**

The public water system or its agent shall prepare a Hydraulic Model Design Elements Report along with and in support of the certification stated in R309-511-6(1). The Hydraulic Model Design Elements Report shall contain, and is not limited to, the following elements:

(1) If the public drinking water system provides water for outdoor use, the report must describe the criteria used to estimate this demand. If the irrigation demand map in R309-510-7(3) is not used, the report shall provide justification for the alternative demands used in the model. If the irrigation demands are based on the map in R309-510-7(3) the report must identify the irrigation zone number, a statement and/or map of how the irrigated acreage is spatially distributed, and the total estimated irrigated acreage. The indicated irrigation demands must be used in the model simulations.

(2) The total number of connections served by the water system including existing connections and anticipated new connections served by the water system after completion of the construction of the project.

(3) The total number of equivalent residential connections (ERC) including both existing connections as well as anticipated new connections associated with the project. The number of ERC's must include high as well as low volume water users. The determination of the equivalent residential connections shall be based on flow requirements using the anticipated demand as outlined in R309-510, or based on alternative sources of information that are deemed acceptable by the Executive Secretary.

(4) Provide methodology used for calculating demand and allocating it to the model; a summary of pipe length by diameter; a hydraulic schematic of the distribution piping showing pressure zones, general pipe connectivity between facilities and pressure zones, storage, elevation and sources; and a list or ranges of values of friction coefficient used in the hydraulic model according to pipe material and condition in the system. All coefficients of friction used in the hydraulic analysis shall be consistent with standard practices.

(5) A statement stating either "yes fire hydrants exist or will exist within the system" or "there are no fire hydrants connected to the system and there is no plan to add fire hydrants with this project." Either statement will require the identification of the local fire authority's name, address, and contact information, as well as the fire flow quantity and duration if required.

(6) The locations of the lowest pressures within the distribution system, and areas identified by the hydraulic model as not meeting each scenario of the minimum pressure requirements in R309-105-9.

(7) Calibration method and quantitative summary of the calibration results (i.e., comparison tables, graphs).

#### **R309-511-8. System Capacity and Expansion Report.**

The public water system or its agent may be required to prepare a System Capacity and Expansion Report along with a Hydraulic Model Design Elements Report, as specified above, in support of the certification. It is intended that the System Capacity and Expansion Report be prepared, maintained, and used by the public water system's management to make informed decisions about its capability to provide water service to future customers and need only be submitted to the Division if requested by the Executive Secretary. The System Capacity and Expansion Report shall consist of the elements described in

R309-110-4 under the definition of "Master Plan" and shall be updated if significant growth or changes to the water system have occurred.

**KEY: drinking water, hydraulic modeling**  
**March 11, 2010**

**19-4-104**

**R309. Environmental Quality, Drinking Water.****R309-515. Facility Design and Operation: Source Development.****R309-515-1. Purpose.**

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

**R309-515-2. Authority.**

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

**R309-515-3. Definitions.**

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

**R309-515-4. General.****(1) Issues to be Considered.**

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

**(2) Communication with the Division.**

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

**(3) Number of Sources and Quantity Requirements.**

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

**(4) Quality Requirements.**

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

**(5) Initial Analyses.**

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

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

(b) Ammonia as N; Boron; Calcium; Chromium, Hex as Cr; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, u mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO<sub>2</sub>; Surfactant as MBAS; Total Hardness as CaCO<sub>3</sub>; and Alkalinity as CaCO<sub>3</sub>,

(c) Pesticides, PCB's and SOC's as listed in R309-200-5(3)(a), Table 200-2 unless the system is a transient non-community pws or, if a community pws or non-transient non-community pws, they have received waivers in accordance with R309-205-6(1)(f). The following six constituents have been

excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin,

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

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

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

**(6) Source Classification.**

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

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

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

**(7) Latitude and Longitude.**

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

**R309-515-5. Surface Water Sources.****(1) Definition.**

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

**(2) Pre-design Submittal.**

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

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

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

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

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

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

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

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

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

**(3) Pre-construction Submittal.**

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

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

municipal purposes;

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

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

(4) Quantity.

The quantity of water from surface sources shall:

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

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

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

(5) Diversion Structures.

Design of intake structures shall provide for:

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

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

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

(d) Occasional cleaning of the inlet line;

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

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

(6) Impoundments.

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

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

(b) Protection from floods during construction;

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

(d) Adequate precautions to limit nutrient loads.

### **R309-515-6. Ground Water - Wells.**

(1) Required Treatment.

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

(2) Standby Power.

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

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

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

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office. For public drinking water

supply wells the rules of R655-4 still apply and must be followed in addition to these rules.

(4) Source Protection.

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

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

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

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

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

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

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

(f) sewer manholes shall meet the following requirements:

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

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

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

(5) Outline of Well Approval Process.

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

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

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

(b) Grouting Inspection During Well Construction.

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

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

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

(ii) a copy of the letter from the authorized individual described in R309-515-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

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

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

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

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

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

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

(6) Well Materials, Design and Construction.

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

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

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

(b) Permanent Steel Casing Pipe shall:

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

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

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

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

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

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

(c) Non-Ferrous Casing Material.

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

(d) Disposal of Cuttings.

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

(e) Packers.

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

(f) Screens.

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

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

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

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

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

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

(g) Plumbness and Alignment Requirements.

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

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

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

(h) Casing Perforations.

The placement of perforations in the well casing shall:

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

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

(i) Grouting Techniques and Requirements.

For all public drinking water wells the annulus between the outermost well casing and the borehole wall shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary (see R309-500-4(1)). If more than one casing is used, including a conductor casing, the annulus between the outermost casing and the next inner casing shall be sealed with grout (meeting the grouting materials requirements of R309-515-6(i)(ii) herein) or with a water tight steel ring having a thickness equal to that of the permanent well casing and continuously welded to both casings.

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600-6(1)(x) (see also R309-515-6(6)(i)(iii)(D) below).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the outermost permanent casing and the drilled hole, taking into consideration any joint couplings.

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

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

(ii) Grouting Materials.

(A) Neat Cement Grout.

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

## (B) Concrete Grout.

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

## (C) Clay Seal.

Where an annular opening greater than six inches is available a seal of swelling bentonite meeting the requirements of R655-4-9.4.2 may be used when approved by the Executive Secretary.

## (iii) Application.

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

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

(C) All temporary construction casings shall be removed prior to or during the well sealing operation. Any exceptions shall be approved by the State Engineer and evidence of approval submitted to the Executive Secretary (see R655-4-9.4.3.1 for conditions surrounding leaving temporary surface casing in place. A temporary construction casing is a casing not intended to be part of the permanent well.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600-6(1)(x)).

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

## (j) Water Entered Into Well During Construction.

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

## (k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

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

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

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-515-6(6)(b) or R309-515-6(6)(c).

## (7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and

cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

## (8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a completed well until permanent equipment is installed.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

## (9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned well is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

## (10) Well Assessment.

## (a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

## (b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to the desired design discharge rate,

## (v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

## (C) depth of test pump intake,

## (D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

## (A) record the time since starting test (in minutes),

## (B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semi-logarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

## (vii) Immediately after termination of the constant-rate

test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7) and/or R309-515-8(2) for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

If the excavation surrounding the well casing allowing installation of the pitless unit compromises the surface seal the competency of the surface seal shall be restored. Torch cut holes in the well casing shall be to neat lines closely following the outline of the pitless adapter and completely filled with a competent weld with burrs and fins removed prior to the installation of the pitless unit and adapter.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) be used to make a connection to a water well casing that is made below the ground. A below the ground connection shall

not be submerged in water during installation,

(iii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iv) pitless adapters or pitless units to be used shall contain a label or imprint indicating compliance with the Water Systems Council Pitless Adapter Standard (PAS-97),

(v) have suitable access to the interior of the casing in order to disinfect the well,

(vi) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vii) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(viii) allow at least one check valve within the well casing,

(ix) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(x) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(xi) be of watertight construction throughout,

(xii) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xiii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiv) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of

foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-515-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540-5(2) (a) through (h))

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

**R309-515-7. Ground Water - Springs.**

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring should only be made after consideration of the requirements of R309-515-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-600-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-515-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been

filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-505-6).

(4) Pre-construction Submittal

Before commencement of construction of spring development improvements the following information must be submitted to the Executive Secretary and approved in writing.

(a) Detailed plans and specifications covering the development work.

(b) A copy of an engineer's or geologist's statement indicating:

(i) the historical record (if available) of spring flow variation,

(ii) expected minimum flow and the time of year it will occur,

(iii) expected maximum flow and the time of year it will occur,

(iv) expected average flow,

(v) the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-110).

(c) A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source.

(d) A Preliminary Evaluation Report on source protection issues as required by R309-600-13.

(e) A copy of the chemical analyses required by R309-515-4(5).

(f) An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-505-7(1)(a)).

(5) Information Required after Spring Development.

After development of a culinary spring, the following information shall be submitted:

(a) Proof of satisfactory bacteriologic quality.

(b) Information on the rate of flow developed from the spring.

(c) As-built plans of spring development.

(6) Operation Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Executive Secretary (see R309-500-9).

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels must be covered with a minimum of ten feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

(i) the liner has a minimum thickness of at least 40 mils,

(ii) all seams in the liner are folded or welded to prevent leakage,

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner,



(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-545 with respect to access openings, venting, and tank overflow. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-110). In remote areas where no grazing or public access is possible, the fencing requirement may be waived by the Executive Secretary. In populated areas a six foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation which has a deep root system shall be removed.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

**KEY: drinking water, source development, source maintenance**  
**February 15, 2009**  
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### **R309-515-8. Operation and Maintenance.**

#### **(1) Spring Collection Area Maintenance.**

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

#### **(2) Pump Lubricants.**

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Executive Secretary.

#### **(3) Algicide Treatment.**

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Division. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

**R309. Environmental Quality, Drinking Water.****R309-520. Facility Design and Operation: Disinfection.****R309-520-1. Purpose.**

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

**R309-520-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-520-3. Definitions.**

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

**R309-520-4. General.**

Continuous disinfection shall be required of all ground water sources not consistently meeting standards of bacteriologic quality. Surface water sources or ground water sources under direct influence of surface water shall be disinfected during the course of required conventional surface water treatment or alternative surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. Systems having only sources classified as ground water (see R309-505-8) and which disinfect shall meet the requirements of R309-105-10(1).

**R309-520-5. Allowable Primary Disinfectants.**

Primary disinfection is defined as the means for providing adequate levels of inactivation of pathogenic micro organisms within the treatment process. Its effectiveness is measured through the "CT" values. Only four disinfectants; chlorine (gaseous and liquid hypochlorites), ozone, ultraviolet light, and chlorine dioxide are allowable for primary disinfection.

**R309-520-6. Allowable Secondary Disinfectants.**

Secondary disinfection is intended to provide an adequate disinfectant residual in the distribution system to maintain the bacteriological quality of treated water. Its effectiveness is measured through maintaining a detectable disinfectant residual throughout the distribution system. Allowable disinfectants are chlorine (gaseous and liquid hypochlorites), chloramine, and chlorine dioxide.

**R309-520-7. Appropriate Uses of Chemical Disinfectants.**

Chemical disinfection alone is appropriate only for groundwater not under the influence of surface water. Surface water, or groundwater under the direct influence of surface water, shall be coagulated and filtered in addition to being disinfected. For criteria to be used in determining required levels of treatment refer to R309-200-5(7).

**R309-520-8. Required Chemical Dosing and Contact Time.**

Minimum levels for primary and secondary disinfection are specified in R309-200-5(7).

**R309-520-9. Siting.**

Disinfection installations shall be sited to permit convenient access through the entire year as well as considerations of safety (i.e. proximity to population or seismic

fault zones).

**R309-520-10. Chlorine.**

(1) General Requirements for all Chlorination Installations.

## (a) Chemical Types.

Disinfection by chlorination shall be accomplished by gaseous chlorine or liquid solutions of calcium or sodium hypochlorites.

## (b) Feeding Equipment.

Solution-feed gas type chlorinators, direct-feed gas type chlorinators or hypochlorite liquid feeders of a positive displacement type shall be provided. Solution-feed gas type chlorinators are preferred. However, for small supplies requiring less than four pounds per day, liquid hypochlorinators are advised.

## (c) Chlorine Feed Capacity.

The design of each chlorinator shall permit:

(i) the chlorinator capacity to be such that a free chlorine residual of at least 2 mg/l can be maintained in the system after 30 minutes of contact time during peak demand. The equipment shall be of such design that it will operate accurately over a feeding range of 0.2 mg/l to 2 mg/l.

(ii) assurance that a detectable residual, either combined or free, can be maintained at all times, at all points in the distribution system.

## (d) Automatic Proportioning.

Automatic proportioning chlorinators shall be required where the rate of flow or chlorine demand is not reasonably constant.

## (e) Injector/diffuser.

The chlorine solution injector/diffuser shall be compatible with the point of application to provide a rapid and thorough mix with all the water being treated. The center of a pipeline is the preferred application point.

## (f) Contact Time and Point of Application.

(i) Due consideration shall be given to the contact time of the chlorine in water with relation to pH, ammonia, taste producing substances, temperature, biological quality, and other pertinent factors.

(ii) Where possible, the design shall minimize the formation of chloro-organic compounds. At plants treating surface water or ground water under the direct influence of surface water, provisions shall be made for applying chlorine to raw water, applied water, filtered water, and water entering the distribution system.

(iii) When treating ground water, provisions shall be made for applying chlorine to at least a reservoir inlet or transmission pipeline which will provide maximum contact time.

(iv) Care must be taken to assure that the point of application will, in conjunction with the pipe and tank configuration of the water system, allow required CT values to be achieved prior to the first consumer connection.

## (g) Minimization of Chlorinated Overflow.

The chlorinator and associated water delivery facilities shall be designed so as to minimize the unnecessary release of chlorinated water into the environment from tank overflows (see also rules of Division of Water Quality pertaining to discharge or pollution).

## (h) Chlorinator Piping.

The chlorinator water supply piping shall be designed to prevent contamination of the treated water supply by sources of questionable quality. At all facilities treating surface water, pre- and post-chlorination systems shall be independent where solution water is not finished water. All chlorinator solution water shall be at least of equal quality to the water receiving the chlorine solution.

## (i) Water Measurement.

A means to measure water flow to be treated shall be

provided.

(j) Residual Testing Equipment.

Chlorine residual test equipment recognized in the latest edition of "Standard Methods for the Examination of Water and Wastewater" shall be provided and shall be capable of measuring residuals to the nearest 0.1 mg/l in the range below 0.5 mg/l, to the nearest 0.3 mg/l between 0.5 mg/l and 1.0 mg/l and to the nearest 0.5 mg/l above 1.0 mg/l.

(k) Standby and Backup Equipment.

A spare parts kit shall be provided and maintained for all chlorinators to repair parts subject to wear and breakage. If there is a large difference in feed rates between routine and emergency dosages, a gas metering tube shall be provided for each dose range to ensure accurate control of the chlorine feed. Where chlorination is required for protection of the supply, standby equipment of sufficient capacity shall be available to replace the largest unit. Standby power shall be available, during power outages, for operation of chlorinators where protection of the supply is required.

(l) Heating, Lighting, Ventilation.

Chlorinator houses shall be heated, lighted and ventilated as necessary to assure proper operation of the equipment, and serviceability.

(m) Bypass Capability.

A chlorinator bypass shall be provided for periods during chlorinator servicing and power outages.

(2) Additional Requirement for Gas Chlorinators.

(a) Automatic Switch over.

Automatic Switch over of chlorine cylinders shall be provided, where necessary, to assure continuous disinfection.

(b) Injector.

Each injector shall be selected for the point of application with particular attention given to the quantity of chlorine to be added, the maximum injector waterflow, the total discharge back pressure, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.

(c) Gas Scrubbers.

Gas chlorine facilities shall conform with the Uniform Fire Code, Article 80 and the Uniform Building Code, Chapter 9 as they are applied by local jurisdictions in the state. Furthermore, local toxic gas ordinances shall be complied with if they exist.

(d) Heat.

The design of the chlorination room shall assure that the temperature in the room will never fall below 32 degrees F or that temperature required for proper operation of the chlorinator, whichever is greater.

(e) Ventilation.

Chlorination equipment rooms which contain cylinders or equipment and lines with gaseous chlorine under pressure shall be vented such that:

(i) when fan(s) are operating, suction will provide one complete room air change per minute;

(ii) the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures;

(iii) air inlets are through louvers near the ceiling;

(iv) louvers for chlorine room air intake and exhaust facilitate airtight closure;

(v) separate switches for the fans and lights are outside of the room, at the entrance to the chlorination equipment room. Outside switches shall be protected from vandalism;

(v) vents from feeders and storage discharge above grade to the outside atmosphere; and

(vi) floor drains are discouraged. Where provided, the floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drainage systems.

(f) Feeder Vent Hose.

The vent hose from the feeder shall discharge to the outside atmosphere above grade at a point least susceptible to vandalism and shall have the end covered with a No. 14 mesh non-corrodible screen.

(g) Housing.

Adequate housing shall be provided for the chlorination equipment and for storing the chlorine (see R309-520-10(1)(l) above).

(h) Housing at Water Treatment Plants.

Separate rooms for cylinders and feed equipment shall be provided at all water treatment plants. Chlorine gas feed and storage shall be enclosed and separated from other operating areas. The chlorine room shall be:

(i) provided with a shatter resistant inspection window installed in an interior wall and preferably located so that an operator may read the weighing scales without entering the chlorine room,

(ii) constructed in a manner that all openings between the chlorine room and the remainder of the plant are sealed, and

(iii) provided with doors equipped with panic hardware assuring ready means of exit and opening only to the building exterior.

(i) Cylinder Security.

Full and empty cylinders of chlorine gas shall be:

(i) isolated from operating areas;

(ii) restrained in position to prevent upset from accidental bumping or a seismic event;

(iii) stored in rooms separated from ammonia storage; and

(iv) stored in areas not in direct sunlight or exposed to excessive heat.

(j) Feed Line Routing.

Chlorine feed lines shall not carry pressurized chlorine gas beyond the chlorinator room. Only vacuum lines may be routed to other portions of the building outside the chlorine room and any openings for these lines must be adequately sealed.

(k) Weighing Scales.

Scales shall be provided for weighing cylinders. Scales should be of a corrosion resistant material and should be placed in a location remote from any moisture. Scales shall be accurate enough to indicate loss of weight to the nearest one pound for 150 pound cylinders and to the nearest 10 pounds for one ton cylinders.

(l) Pressure Gauges.

Pressure gauges shall be provided on the inlet and outlet of each chlorine injector as indicated in R309-520-10(2)(b). The preferred location is on the water feed line immediately before the inlet of the chlorine injector and at a point on the water main just ahead of chlorine injection. These locations should give accurate pressure readings while not being subjected to corrosive chlorinated water.

(m) Injector Protection.

A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on the water feed line. Provision for flushing of the screen is required.

(n) Chlorine Vent Line Protection.

A non-corrodible fine mesh (No. 14 or finer) screen shall be placed over the discharge ends of all vent lines. All vent lines shall discharge to the outside atmosphere above grade and at locations least susceptible to vandalism.

(o) Gas Masks.

(i) Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas in one-ton cylinders is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a 30 minute capacity, and be compatible with or exactly the same as units used by the fire department responsible for the plant.

(ii) Where smaller chlorine cylinders are used, suitable gas masks must be provided.

(p) Chlorine Leak Detection and Repair.

A bottle of Ammonium Hydroxide, 56% ammonia solution, shall be available for chlorine leak detection; where ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. Continuous chlorine leak detection equipment is recommended. Where a leak detector is provided, it shall be equipped with both an audible alarm and a warning light.

**R309-520-11. Ozone.**

Proposals for use of ozone disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

Part 4, Section 4.3.7, Ozone, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and shall govern the design and operation of disinfection facilities utilizing ozone. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-520-12. Chlorine Dioxide.**

Proposals for the use of Chlorine Dioxide as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications. The "CT" values for the inactivation of Giardia cysts using chlorine dioxide are independent of pH, with only temperature affecting the value. For chlorine dioxide, a 3-log inactivation of Giardia cysts will generally result in greater than 4-log virus inactivation, and assure meeting requirements. However, for chlorine dioxide, unlike chlorine where this relationship always hold true, at certain temperatures, the 4-log virus CT may be higher than the 3-log Giardia cyst CT.

**R309-520-13. Chloramines.**

Proposals for the use of Chloramines as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications.

**R309-520-14. Ultraviolet Light.**

(1) Proposals for use of ultraviolet disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

(2) Secondary disinfection and maintenance of the required residual will be necessary where disinfection of the supply is required.

(3) Ultraviolet disinfection will be permitted where the design conforms to the minimum recommendations of the U.S. Public Health Service listed below.

(a) Ultraviolet radiation at a level of 2,537 Angstrom units must be applied at a minimum dosage of 16,000 microwatt-seconds per square centimeter per second (1,600 Finsen Units) at all points throughout the water disinfection chamber.

(b) Maximum water depth in the chamber, measured from the tub surface to the chamber wall, shall not exceed three inches.

(c) The ultraviolet tubes shall be:

(i) jacketed so that a proper operating tube temperature of about 105 degrees F is maintained; and

(ii) the jacket shall be of quartz or high silica glass with similar optical characteristics.

(d) A flow or time delay mechanism shall be provided to permit a two minute tube warm-up period before water flows from the unit.

(e) The unit shall be designed to permit frequent mechanical cleaning of the water contact surface of the jacket

without disassembly of the unit.

(f) An automatic flow control valve, accurate within the expected pressure range, shall be installed to restrict flow to the maximum design flow of the treatment unit.

(g) An accurately calibrated ultraviolet intensity meter, properly filtered to restrict its sensitivity to the disinfection spectrum, shall be installed in the wall of the disinfection chamber at the point of greatest water depth from the tube or tubes.

(h) A diversion valve or automatic shut-off valve shall be installed which will permit flow into the finished drinking water system only when at least the minimum ultraviolet dosage is applied. When power is not being supplied to the unit, the valve should be in a closed position which prevents the flow of water into the finished drinking water system.

(i) An automatic, audible alarm shall be installed to warn of malfunction or impending shutdown.

(j) The materials of construction shall not impart toxic materials into the water either as a result of the presence of toxic constituents in materials of construction or as a result of physical or chemical changes resulting from exposure to ultraviolet energy.

(k) The unit shall be designed to protect the operator against electrical shock or excessive radiation.

(l) As with any drinking water treatment process, due consideration must be given to the reliability, economics, and competent operation of the disinfection process and related equipment, including:

(i) installation of the unit in a protected enclosure not subject to extremes of temperature which could cause malfunction; and

(ii) provision of a spare UV tube and other necessary equipment to effect prompt repair by qualified personnel properly instructed in the operation and maintenance of the equipment.

**R309-520-15. Operation and Maintenance.**

(1) Safety.

Chlorine gas facilities shall be operated in a manner which minimizes risks to water system personnel or the general public.

(2) Residual Chlorine.

Public drinking water systems supplied water from conventional surface water treatment or alternatives shall test for detectable chlorine residual or HPC within the distribution system as outlined in R309-215-10.

(3) Chlorine Dosing.

Chlorine, when used in the distribution system, shall 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 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, 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.

(4) ANSI/NSF Standard 60 Certification.

All chemicals, including chlorine gas, added to drinking water supplied by a public water system shall be certified as complying with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals.

**KEY: drinking water, primary disinfectants, secondary disinfectants, operation and maintenance**

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19-4-104

**R309. Environmental Quality, Drinking Water.**  
**R309-525. Facility Design and Operation: Conventional Surface Water Treatment.**

**R309-525-1. Purpose.**

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

**R309-525-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-525-3. Definitions.**

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

**R309-525-4. General.**

(1) Treatment plants used for the purification of surface water supplies or ground water supplies under direct influence of surface water must conform to the requirements given herein. The plants shall have, as a minimum, facilities for flash mixing of coagulant chemicals, flocculation, sedimentation, filtration and disinfection.

(2) The overall design of a water treatment facility must be carefully examined to assure the compatibility of all devices and processes. The design of treatment processes and devices shall depend on an evaluation of the nature and quality of the particular water to be treated. The combined unit processes shall produce water meeting all established drinking water standards as given in R309-200.

(3) Direct filtration may be acceptable and rules governing this method are given in R309-530-5.

(4) Refer to R309-530-9 for policy with regards to novel water treatment equipment or techniques which may depart from the requirements outlined herein.

**R309-525-5. Plant Capacity and Number of Treatment Trains.**

(1) A determination of the required plant capacity and the required number of treatment trains shall be made after consultation with the Division. Ordinarily, a minimum of two units each for flocculation, sedimentation and filtration must be provided. The design shall provide for parallel or series operation of the clarification stages. Flash mix shall be designed and operated to provide a minimum velocity gradient of 750 fps/ft. Mixing time shall be less than thirty seconds. The treatment plant shall be designed to meet the anticipated "peak day demand" of the system being served when the treatment plant is the system's sole source. When other sources are available to the system, this requirement may be relaxed.

(2) The degree of "back-up" required in a water treatment plant will vary with the number of connections to be served, the availability of other acceptable sources of water, and the ability to control water consumption. Thus, when other sources are available to the system, the requirements of R309-525-7 (Plant Reliability) may also be relaxed. The Division shall be consulted in this regard prior to plant design.

**R309-525-6. Plant Siting.**

Plants must be sited with due regard for earthquake, flood, and fire hazard. Assistance in this matter is available from the Utah Geologic Survey. The Division shall be consulted regarding site selection prior to the preparation of engineering plans and specifications.

**R309-525-7. Plant Reliability.**

Plants designed for processing surface water or ground water under direct influence of surface water shall be designed to meet present and future water demands and assure reliable operation at all times. To help assure proper, uninterrupted operation:

(1) A manual override shall be provided for any automatic controls. Highly sophisticated automation may put proper maintenance beyond the capability of the plant operator, leading to equipment breakdowns or expensive servicing. Adequate funding must be assured for maintenance of automatic equipment.

(2) Main switch electrical controls shall be located above grade, in areas not subject to flooding.

(3) Plants shall be operated by qualified personnel approved by the Executive Secretary. As a minimum, the treatment plant manager is required to be certified in accordance with R309-300 at the grade of the waterworks system with an appropriate unrestricted Utah Operator's Certificate.

(4) The plant shall be constructed to permit units to be taken out of service without disrupting operation, and with drains or pumps sized to allow dewatering in a reasonable period of time.

(5) The plant shall have standby power available to permit operation of essential functions during power outages.

(6) The plant shall be provided with backup equipment or necessary spare parts for all critical items.

(7) Individual components critical to the operation of a treatment plant shall be provided with anchorage to secure the components from loss due to an earthquake event.

**R309-525-8. Color Coding and Pipe Marking.**

The piping in water treatment plants shall be color coded for identification. The following table contains color schemes recommended by the Division. Identification of the direction of flow and the contained liquid shall also be made on the pipe.

TABLE 525-1

Recommended Color Scheme for Piping

Water Lines	
Raw	Olive Green
Settled or Clarified	Aquamarine
Finished	Dark Blue
Chemical Lines	
Alum	Orange
Ammonia	White
Carbon Slurry	Black
Chlorine (Gas and Solution)	Yellow
Fluoride	Light Blue with Red Band
Lime Slurry	Light Green
Potassium Permanganate	Violet
Sulfur Dioxide	Light Green with Yellow Band
Waste lines	
Backwash Waste	Light Brown
Sludge	Dark Brown
Sewer (Sanitary or Other)	Dark Gray
Other	
Compressed Air	Dark Green
Gas	Red
Other Lines	Light Gray

**R309-525-9. Diversion Structures and Pretreatment.**

Refer to R309-515-5(5) for diversion structure design.

**R309-525-10. Presedimentation.**

Waters containing, heavy grit, sand, gravel, leaves, debris, or a large volume of sediments may require pretreatment, usually sedimentation, with or without the addition of coagulation chemicals.

(1) Presedimentation basins shall be equipped for efficient sludge removal.

(2) Incoming water shall be dispersed across the full width of the line of travel as efficiently as practical. Short-circuiting shall be minimized.

(3) Provisions for bypassing presedimentation basins shall be included.

### R309-525-11. Chemical Addition.

#### (1) Goals.

Chemicals used in the treatment of surface water shall achieve the following:

(a) Primary coagulant chemicals shall be utilized to permit the formation of a floc,

(b) Disinfectants shall be added to raw and/or treated water.

#### (2) Application Criteria.

In achieving these goals the chemical(s) shall be applied to the water:

(a) To assure maximum control and flexibility of treatment,

(b) To assure maximum safety to consumer and operators,

(c) To prevent backflow or back-siphonage of chemical solutions to finished water systems.

(d) With appropriate spacing of chemical feed to eliminate any interference between chemicals.

#### (3) Typical Chemical Doses.

Chemical doses shall be estimated for each treatment plant to be designed. "Jar tests" shall be conducted on representative raw water samples to determine anticipated doses.

#### (4) Information Required for Review.

With respect to chemical applications, a submittal for Division review shall include:

(a) Descriptions of feed equipment, including maximum and minimum feed rates,

(b) Location of feeders, piping layout and points of application,

(c) Chemical storage and handling facilities,

(d) Specifications for chemicals to be used,

(e) Operating and control procedures including proposed application rates,

(f) Descriptions of testing equipment and procedures, and

(g) Results of chemical, physical, biological and other tests performed as necessary to define the optimum chemical treatment.

#### (5) Quality of Chemicals.

All chemicals added to water being treated for use in a public water system for human consumption shall comply with ANSI/NSF Standard 60. Evidence for this requirement shall be met if the chemical shipping container labels or material safety data sheets include:

(a) Chemical name, purity and concentrations, Supplier name and address, and

(b) Labeling indicating compliance with ANSI/NSF Standard 60.

#### (6) Storage, Safe Handling and Ventilation of Chemicals.

All requirements of the Utah Occupational Safety and Health Act (UOSHA) for storage, safe handling and ventilation of chemicals shall apply to public drinking water facilities. The designer shall incorporate all applicable UOSHA standards into the facility design, however, review of facility plans by the Division of Drinking Water under this Rule shall be limited to the following requirements:

(a) Storage of Chemicals.

(i) Space shall be provided for:

(A) An adequate supply of chemicals,

(B) Convenient and efficient handling of chemicals,

(C) Dry storage conditions.

(ii) Storage tanks and pipelines for liquid chemicals shall be specific to the chemicals and not for alternates.

(iii) Chemicals shall be stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit.

(iv) Liquid chemical storage tanks must:

(A) Have a liquid level indicator, and

(B) Have an overflow and a receiving basin or drain capable of receiving accidental spills or overflows, and meeting all requirements of R309-525-23, and

(C) Be equipped with an inverted "J" air vent.

(v) Acids shall be kept in closed acid-resistant shipping containers or storage units.

(b) Safe Handling.

(i) Material Safety Data Sheets for all chemicals utilized shall be kept and maintained in prominent display and be easily accessed by operators.

(ii) Provisions shall be made for disposing of empty bags, drums or barrels by an acceptable procedure which will minimize operator exposure to dusts.

(iii) Provisions shall be made for measuring quantities of chemicals used to prepare feed solutions.

(c) Dust Control and Ventilation.

Adequate provision shall be made for dust control and ventilation.

(7) Feeder Design, Location and Control.

(a) General Feeder Design.

General equipment design, location and control shall be such that:

(i) feeders shall supply, at all times, the necessary amounts of chemicals at an accurately controlled rate, throughout the anticipated range of feed,

(ii) chemical-contact materials and surfaces are resistant to the aggressiveness of the chemicals,

(iii) corrosive chemicals are introduced in a manner to minimize potential for corrosion,

(iv) chemicals that are incompatible are not fed, stored or handled together.

(v) all chemicals are conducted from the feeder to the point of application in separate conduits,

(vi) spare parts are available for all feeders to replace parts which are subject to wear and damage,

(vii) chemical feeders are as near as practical to the feed point,

(viii) chemical feeders and pumps operate at no lower than 20 percent of the feed range,

(ix) chemicals are fed by gravity where practical,

(x) be readily accessible for servicing, repair, and observation.

(b) Chemical Feed Equipment.

Where chemical feed is necessary for the protection of the consumer, such as disinfection, coagulation or other essential processes:

(i) a minimum of two feeders, one active and one standby, shall be provided for each chemical,

(ii) the standby unit or a combination of units of sufficient capacity shall be available to replace the largest unit during shut-downs,

(iii) where a booster pump is required, duplicate equipment shall be provided and, when necessary, standby power,

(iv) a separate feeder shall be used for each non-compatible chemical applied where a feed pump is required, and

(v) spare parts shall be available for all feeders to replace parts which are subject to wear and damage.

(c) Dry Chemical Feeders.

Dry chemical feeders shall:

(i) measure feed rate of chemicals volumetrically or gravimetrically, and

(ii) provide adequate solution water and agitation of the chemical in the solution tank.

(d) Feed Rate Control.

(i) Feeders may be manually or automatically controlled, with automatic controls being designed to allow override by manual controls.

(ii) Chemical feed rates shall be proportional to flows.

(iii) A means to measure water flow rate shall be provided.

(iv) Provisions shall be made for measuring the quantities of chemicals used.

(v) Weighing scales:

(A) shall be provided for weighing cylinders at all plants using chlorine gas,

(B) may be required for fluoride solution feed, where applicable,

(C) shall be provided for volumetric dry chemical feeders, and

(D) shall be accurate to measure increments of 0.5 percent of scale capacity.

(8) Feeder Appurtenances.

(a) Liquid Chemical Solution Pumps.

Positive displacement type solution feed pumps shall be used to feed liquid chemicals, but shall not be used to feed chemical slurries. Pumps must be sized to match or exceed maximum head conditions found at the point of injection. All liquid chemical feeders shall be provided with devices approved by the Utah Plumbing Code which will prevent the siphoning of liquid chemical through the pump.

(b) Solution Tanks.

(i) A means consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension.

(ii) Means shall be provided to measure the solution level in the tank.

(iii) Chemical solutions shall be kept covered. Large tanks with access openings shall have the openings curbed and fitted with tight overhanging covers.

(iv) Subsurface locations are discouraged, but when used for solution tanks shall:

(A) be free from sources of possible contamination, and

(B) assure positive drainage for ground waters, accumulated water, chemical spills and overflows.

(v) Overflow pipes, when provided, shall:

(A) have a free fall discharge, and

(B) be located where noticeable.

(vi) Acid storage tanks shall be vented to the outside atmosphere, but not through vents in common with day tanks.

(vii) Each tank shall be provided with a valved drain, protected against backflow in accordance with R309-525-11(10)(b) and R309-525-11(10)(c).

(viii) Solution tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage or accidental drainage shall not enter the water in conduits, treatment or storage basins.

(ix) When polymers are used, storage tanks shall be located away from heat sources and direct sunlight.

(c) Day Tanks.

(i) Day tanks shall be provided where dilution of liquid chemical is required prior to feeding.

(ii) Day tanks shall meet all the requirements of R309-525-11(9)(b).

(iii) Certain chemicals, such as polymers, become unstable after hydration, therefore, day tanks shall hold no more than a thirty hour supply unless manufacturer's recommendations allow for longer periods.

(iv) Day tanks shall be scale-mounted, or have a calibrated

gauge painted or mounted on the side if liquid levels cannot be observed in a gauge tube or through translucent sidewalls of the tank. In opaque tanks, a gauge rod extending above a referenced point at the top of the tank, attached to a float may be used. The ratio of the cross-sectional area of the tank to its height must be such that unit readings are meaningful in relation to the total amount of chemical fed during a day.

(v) Hand pumps may be provided for transfer from a carboy or drum. A top rack may be used to permit withdrawal into a bucket from a spigot. Where motor-driven transfer pumps are provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank, must be provided, unless spill containment is provided for both bulk and day tanks.

(vi) A means which is consistent with the nature of the chemical solution shall be provided to maintain uniform strength of solution in a day tank. continuous agitation shall be provided to maintain chemical slurries in suspension.

(vii) Tanks shall be properly labeled to designate the chemical contained.

(d) Feed Lines.

(i) Feed lines shall be as short as possible in length of run, and be:

(A) of durable, corrosion resistant material,

(B) easily accessible throughout the entire length,

(C) protected against freezing, and

(D) readily cleanable.

(ii) Feed lines shall slope upward from the chemical source to the feeder when conveying gases.

(iii) Lines shall be designed with due consideration of scale forming or solids depositing properties of the water, chemical, solution or mixture conveyed.

(9) Make up Water Supply and Protection.

(a) In Plant Water Supply.

In plant water supply shall be:

(i) Ample in supply, adequate in pressure, and of a quality equal to or better than the water at the point of application.

(ii) Provided with means for measurement when preparing specific solution concentrations by dilution.

(iii) Properly protected against backflow.

(b) Cross-Connection Control.

Cross-connection control shall be provided to assure that:

(i) The make-up waterlines discharging to solution tanks shall be properly protected from backflow as required by the Utah Plumbing Code.

(ii) Liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-525-11(9)(c).

(iii) No direct connection exists between any sewer and the drain or overflow from the feeder, solution chamber or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle.

(iv) Pre- and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well. The water supply to each eductor shall have a separate shut-off valve. No master shut off valve will be allowed.

(c) Liquid Chemical Feeders, Siphon Control.

Liquid chemical feeders shall be such that chemical solutions cannot be siphoned into the process units, by:

(i) Assuring positive pressure at the point of discharge,

(ii) Providing vacuum relief,

(iii) Providing a suitable air gap, or

(iv) Other suitable means or combinations as necessary.

(10) Operator Safety.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that



they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following recommendations:

(a) Floor surfaces should be smooth and impervious, slip-proof and well drained.

(b) At least one pair of rubber gloves, a dust respirator of a type certified by the National Institute of Occupational Safety and Health (NIOSH) for toxic dusts, an apron or other protective clothing and goggles or face mask should be provided for each operator. A deluge shower and/or eye washing device should be installed where strong acids and alkalis are used or stored.

(c) A water holding tank that will allow water to reach room temperature should be installed in the water line feeding the deluge shower and eye washing device. Other methods of water tempering may be available.

(d) Adequate ventilation should be provided.

(11) Design for Specific Chemicals.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following recommendations:

Acids and Caustics.

(i) Acids and caustics should be kept in closed corrosion-resistant shipping containers or storage units.

(ii) Acids and caustics should not be handled in open vessels, but should be pumped in undiluted form from original containers through suitable hose, to the point of treatment or to a covered day tank.

Sodium Chlorite for Chlorine Dioxide Generation.

Proposals for the storage and use of sodium chlorite should be approved by the Executive Secretary prior to the preparation of final plans and specifications. Provisions should be made for proper storage and handling of sodium chlorite to eliminate any danger of explosion.

(i) Sodium Chlorite Storage: (A) Sodium chlorite should be stored by itself in a separate room and preferably should be stored in an outside building detached from the water treatment facility. It should be stored away from organic materials which would react violently with sodium chlorite; (B) The storage structures should be constructed of noncombustible materials; (C) If the storage structure is to be located in a area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions.

(ii) Sodium Chlorite Handling: (A) Care should be taken to prevent spillage; (B) An emergency plan of operation should be available for the clean up of any spillage; (C) Storage drums should be thoroughly flushed prior to recycling or disposal.

(iii) Sodium Chlorite Feeders: (A) Positive displacement feeders should be provided; (B) Tubing for conveying sodium chlorite or chlorine dioxide solutions should be Type 1 PVC, polyethylene or materials recommended by the manufacturer; (C) Feed lines should be installed in a manner to prevent formation of gas pockets and should terminate at a point of positive pressure; (D) Check valves should be provided to prevent the backflow of chlorine into the sodium chlorite line.

**R309-525-12. Mixing.**

(1) Flash Mix.

(a) Equipment - Mechanical, in-line or jet mixing devices shall be used.

(b) Mixing - All devices used in rapid mixing shall be capable of imparting a minimum velocity gradient (G) of at least 750 fps per foot. Mixing time shall be less than thirty seconds.

(c) Location - The flash mix and flocculation basins shall be as close together as possible.

(d) Introduction of chemicals - Primary coagulant

chemicals shall be added at the point of maximum turbulence within the flash mix unit. Where in-line mixing devices are used chemical injection should be at the most appropriate upstream point.

(2) Flocculation.

(a) Basin design.

Inlet and outlet design shall prevent short-circuiting and destruction of floc. A drain or pumps shall be provided to handle dewatering and sludge removal.

(b) Detention.

The flow-through velocity shall not be less than 0.5 feet per minute nor greater than 1.5 feet per minute with a detention time for floc formation of at least 30 minutes.

(c) Equipment.

Agitators shall be driven by variable speed drives with the peripheral speed of paddles ranging from 0.5 fps to 2.0 fps. Equipment shall be capable of imparting a velocity gradient (G) between 25 fps per foot and 80 fps per foot to the water treated. Compartmentalized tapered energy flocculation concept may also be used in which G tapers from 100 fps to 10 fps per foot.

(d) Hydraulic flocculation.

Hydraulic flocculation may be permitted and shall be reviewed on a case by case basis. The unit must yield a G value equivalent to that required by b and c above.

(e) Piping.

Flocculation and sedimentation basins shall be as close as possible. The velocity of flocculated water through pipes or conduits to settling basins shall not be less than 0.5 fps nor greater than 1.5 fps. Allowance must be made to minimize turbulence at bends and changes in direction.

(f) Other designs.

Baffling may be used to provide for flocculation in small plants only after consultation with the Division. The design shall be such that the velocities and flows noted above will be maintained.

(g) Visible floc.

The flocculation unit shall be capable of producing a visible, settleable floc.

**R309-525-13. Sedimentation.**

(1) General Design Requirements.

Sedimentation shall follow flocculation. The detention time for effective clarification is dependent upon a number of factors related to basin design and the nature of the raw water. The following criteria apply to conventional sedimentation units:

(a) Inlet devices.

Inlets shall be designed to distribute the water equally and at uniform velocities. Open ports, submerged ports, or similar entrance arrangements are required. A baffle shall be constructed across the basin close to the inlet end and shall project several feet below the water surface to dissipate inlet velocities and provide uniform flows across the basin.

(b) Outlet devices.

Outlet devices shall be designed to maintain velocities suitable for settling in the basin and to minimize short-circuiting. The use of submerged orifices is recommended in order to provide a volume above the orifices for storage when there are fluctuations in the flow.

(c) Emergency Overflow.

An overflow weir (or pipe) shall be installed which will establish the maximum water level desired on top of the filters. It shall discharge by gravity with a free fall to a location where the discharge will be visible.

(d) Sludge Removal.

Sludge removal design shall provide that:

(i) sludge pipes shall be not less than three inches in diameter and arranged to facilitate cleaning.

(ii) entrance to sludge withdrawal piping shall prevent

clogging,

(iii) valves shall be located outside the basin for accessibility, and

(iv) the operator may observe and sample sludge being withdrawn from the unit.

(v) Sludge collection shall be accomplished by mechanical means.

(e) Drainage.

Basins shall be provided with a means for dewatering. Basin bottoms shall slope toward the drain not less than one foot in 12 feet where mechanical sludge collection equipment is not provided.

(f) Flushing lines.

Flushing lines or hydrants shall be provided and shall be equipped with backflow prevention devices acceptable to the Executive Secretary.

(g) Safety.

Appropriate safety devices shall be included as required by the Occupational Safety and Health Act (OSHA).

(h) Removal of floating material.

Provision shall be made for the periodic removal of floating material.

(2) Sedimentation Without Tube Settlers.

If tube settling equipment is not used within settling basins, the following requirements apply:

(a) Detention Time.

A minimum of four hours of detention time shall be provided. Reduced sedimentation time may be approved when equivalent effective settling is demonstrated or multimedia filtration is employed.

(b) Weir Loading.

The rate of flow over the outlet weir shall not exceed 20,000 gallons per day per foot of weir length. Where submerged orifices are used as an alternate for overflow weirs they shall not be lower than three feet below the water surface when the flow rates are equivalent to weir loading.

(c) Velocity.

The velocity through settling basins shall not exceed 0.5 feet per minute. The basins shall be designed to minimize short-circuiting. Fixed or adjustable baffles shall be provided as necessary to achieve the maximum potential for clarification.

(d) Depth.

The depth of the sedimentation basin shall be designed for optimum removal.

(3) Sedimentation With Tube Settlers.

Proposals for settler unit clarification shall be approved by the Executive Secretary prior to the preparation of final plans and specifications.

(a) Inlet and outlet design shall be such to maintain velocities suitable for settling in the basin and to minimize short circuiting.

(b) Flushing lines shall be provided to facilitate maintenance and be properly protected against backflow or back siphonage. Drain and sludge piping from the settler units shall be sized to facilitate a quick flush of the settler units and to prevent flooding other portions of the plant.

(c) Although most units will be located within a plant, design of outdoor installations shall provide sufficient freeboard above the top of settlers to prevent freezing in the units.

(d) The design application rate shall be a maximum rate of 2 gal/sq.ft./min of cross-sectional area (based on 24-inch long 60 degree tubes or 39.5-inch long 7.5 degree tubes), unless higher rates are successfully shown through pilot plant or in-plant demonstration studies.

### **R309-525-14. Solids Contact Units.**

(1) General.

Solids contact units are generally acceptable for combined softening and clarification where water characteristics,

especially temperature, do not fluctuate rapidly, flow rates are uniform and operation is continuous. Before such units are considered as clarifiers without softening, specific approval of the Executive Secretary shall be obtained. A minimum of two units are required for surface water treatment.

(2) Installation of Equipment

The design engineer shall see that a representative of the manufacturer is present at the time of initial start-up operation to assure that the units are operating properly.

(3) Operation of Equipment.

The following shall be provided for plant operation:

(a) a complete outfit of tools and accessories,

(b) necessary laboratory equipment, and

(c) adequate piping with suitable sampling taps so located as to permit the collection of samples of water from critical portions of the units.

(4) Chemical feed.

Chemicals shall be applied at such points and by such means as to insure satisfactory mixing of the chemicals with the water.

(5) Mixing.

A flash mix device or chamber ahead of solids contact units may be required to assure proper mixing of the chemicals applied. Mixing devices employed shall be so constructed as to:

(a) provide good mixing of the raw water with previously formed sludge particles, and

(b) prevent deposition of solids in the mixing zone.

(6) Flocculation.

Flocculation equipment:

(a) shall be adjustable (speed and/or pitch),

(b) shall provide for coagulation in a separate chamber or baffled zone within the unit, and

(c) shall provide the flocculation and mixing period to be not less than 30 minutes.

(7) Sludge concentrators.

(a) The equipment shall provide either internal or external concentrators in order to obtain a concentrated sludge with a minimum of waste water.

(b) Large basins shall have at least two sumps for collecting sludge with one sump located in the central flocculation zone.

(8) Sludge removal.

Sludge removal design shall provide that:

(a) sludge pipes shall be not less than three inches in diameter and so arranged as to facilitate cleaning,

(b) the entrance to the sludge withdrawal piping shall prevent clogging,

(c) valves shall be located outside the tank for accessibility, and

(d) the operator may observe and sample sludge being withdrawn from the unit.

(9) Cross-connections.

(a) Blow-off outlets and drains shall terminate and discharge at places satisfactory to the Executive Secretary.

(b) Cross-connection control must be included for the finished drinking water lines used to back flush the sludge lines.

(10) Detention period.

The detention time shall be established on the basis of the raw water characteristics and other local conditions that affect the operation of the unit. Based on design flow rates, the detention time shall be:

(a) two to four hours for suspended solids contact clarifiers and softeners treating surface water, and

(b) one to two hours for suspended solids contact softeners treating only ground water.

(11) Suspended slurry concentrate.

Softening units shall be designed so that continuous slurry concentrates of one percent or more, by weight, can be satisfactorily maintained.

(12) Water losses.

(a) Units shall be provided with suitable controls for sludge withdrawal.

(b) Total water losses shall not exceed:

(i) five percent for clarifiers,

(ii) three percent for softening units.

(c) Solids concentration of sludge bled to waste shall be:

(i) three percent by weight for clarifiers,

(ii) five percent by weight for softeners.

(13) Weirs or orifices.

The units shall be equipped with either overflow weirs or orifices constructed so that water at the surface of the unit does not travel over 10 feet horizontally to the collection trough.

(a) Weirs shall be adjustable, and at least equivalent in length to the perimeter of the basin.

(b) Weir loading shall not exceed:

(i) 10 gpm per foot of weir length for units used for clarifiers

(ii) 20 gpm per foot of weir length for units used for softeners.

(c) Where orifices are used the loading rates per foot of launderer shall be equivalent to weir loadings. Either shall produce uniform rising rates over the entire area of the tank.

(14) Upflow rates.

Upflow rates shall not exceed:

(a) 1.0 gpm/sf at the sludge separation line for units used for clarifiers,

(b) 1.75 gpm/sf at the slurry separation line for units used as softeners.

### **R309-525-15. Filtration.**

(1) General.

Filters may be composed of one or more media layers. Mono-media filters are relatively uniform throughout their depth. Dual or multi-layer beds of filter material are so designed that water being filtered first encounters coarse material, and progressively finer material as it travels through the bed.

(2) Rate of Filtration.

(a) The rate of filtration shall be determined through consideration of such factors as raw water quality, degree of pretreatment provided, filter media, water quality control parameters, competency of operating personnel, and other factors as determined by the Executive Secretary. Generally, higher filter rates can be assigned for the dual or multi-media filter than for a single media filter because the former is more resistant to filter breakthrough.

(b) The filter rate shall be proposed and justified by the designing engineer to the satisfaction of the Executive Secretary prior to the preparation of final plans and specifications.

(c) The use of dual or multi-media filters may allow a reduction of sedimentation detention time (see R309-525-13(2)(a)) due to their increased ability to store sludge.

(d) Filter rates assigned by the Executive Secretary must never be exceeded, even during backwash periods.

(e) The use of filter types other than conventional rapid sand gravity filters must receive written approval from the Executive Secretary prior to the preparation of final plans and specifications.

(3) Number of Filters Required.

At least two filter units shall be provided. Where only two filter units are provided, each shall be capable of meeting the plant design capacity (normally the projected peak day demand) at the approved filtration rate. Where more than two filter units are provided, filters shall be capable of meeting the plant design capacity at the approved filtration rate with one filter removed from service. Refer to R309-525-5 for situations where these requirements may be relaxed.

(4) Media Design.

R309-525-15(4)(a) through R309-525-15(4)(e), which follow, give requirements for filter media design. These requirements are considered minimum and may be made more stringent if deemed appropriate by the Executive Secretary.

(a) Mono-media, Rapid Rate Gravity Filters.

The allowable maximum filtration rate for a silica sand, mono-media filter is three gpm/sf. This type of filter is composed of clean silica sand having an effective size of 0.35 mm to 0.65 mm and having a uniformity coefficient less than 1.7. The total bed thickness must not be less than 24 inches nor generally more than 30 inches.

(b) Dual Media, Rapid Rate Gravity Filters.

The following applies to all dual media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf. They must settle to reconstitute the bed essentially in the original layers upon completion of backwashing.

(iii) The bottom layer must be at least ten inches thick and consist of a material having an effective size no greater than 0.45 mm and a uniformity coefficient not greater than 1.5.

(iv) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.5.

(v) Dual media filters will be assigned a filter rate up to six gpm/sf. Generally if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vi) Each dual media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate automatic backwash if the filter effluent turbidity exceeds 0.3 NTU. If the filter turbidity exceeds one NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a one NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(c) Tri-Media, Rapid Rate Gravity Filters.

The following applies to all Tri-media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf. They must settle to reconstitute the bed to the normal gradation of coarse to fine in the direction of flow upon completion of backwashing.

(iii) The bottom layer must be at least four inches thick and consist of a material having an effective size no greater than 0.45 mm and uniformity coefficient not greater than 2.2. The bottom layer thickness may be reduced to three inches if it consists of a material having an effective size no greater than 0.25 mm and a uniformity coefficient not greater than 2.2.

(iv) The middle layer must consist of silica sand having an effective size of 0.35 mm to 0.8 mm, and a uniformity coefficient not greater than 1.8.

(v) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.85.

(vi) Tri-media filters will be assigned a filter rate up to 6 gpm/sf. Generally, if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vii) Each Tri-media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate

automatic backwash if the effluent turbidity exceeds 0.3 NTU. If the filter turbidity exceeds one NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a one NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(d) Granulated Activated Carbon (GAC).

Use of granular activated carbon media shall receive the prior approval of the Executive Secretary, and must meet the basic specifications for filter material as given above, and:

(i) There shall be provision for adding a disinfectant to achieve a suitable residual in the water following the filters and prior to distribution.

(ii) There shall be a means for periodic treatment of filter material for control of biological or other growths,

(iii) Facilities for carbon regeneration or replacement must be provided.

(e) Other Media Compositions and Configurations.

Filters consisting of materials or configurations not prescribed in this section will be considered on experimental data or available operation experience.

(5) Support Media, Filter Bottoms and Strainer Systems.

Care must be taken to insure that filter media, support media, filter bottoms and strainer systems are compatible and will give satisfactory service at all times.

(a) Support Media.

The design of support media will vary with the configuration of the filtering media and the filter bottom. Thus, support media and/or proprietary filter bottoms shall be reviewed on a case-by-case basis.

(b) Filter Bottoms and Strainer Systems.

(i) The design of manifold type collection systems shall:

(A) Minimize loss of head in the manifold and laterals,

(B) Assure even distribution of washwater and even rate of filtration over the entire area of the filter,

(C) Provide a ratio of the area of the final openings of the strainer system to the area of the filter of about 0.003,

(D) Provide the total cross-sectional area of the laterals at about twice the total area of the final openings,

(E) Provide the cross-sectional area of the manifold at 1.5 to 2 times the total area of the laterals.

(ii) Departures from these standards may be acceptable for high rate filter and for proprietary bottoms.

(iii) Porous plate bottoms shall not be used where calcium carbonate, iron or manganese may clog them or with waters softened by lime.

(6) Structural Details and Hydraulics.

The filter structure shall be so designed as to provide for:

(a) Vertical walls within the filter,

(b) No protrusion of the filter walls into the filter media,

(c) Cover by superstructure,

(d) Head room to permit normal inspection and operation,

(e) Minimum water depth over the surface of the filter media of three feet, unless an exception is granted by the Executive Secretary,

(f) Maximum water depth above the filter media shall not exceed 12 feet,

(g) Trapped effluent to prevent backflow of air to the bottom of the filters,

(h) Prevention of floor drainage to enter onto the filter by installation of a minimum four inch curb around the filters,

(i) Prevention of flooding by providing an overflow or other means of control,

(j) Maximum velocity of treated water in pipe and conduits to filters of two fps,

(k) Cleanouts and straight alignment for influent pipes or conduits where solids loading is heavy or following lime-soda softening,

(l) Washwater drain capacity to carry maximum flow,

(m) Walkways around filters, to be not less than 24 inches wide,

(n) Safety handrails or walls around filter areas adjacent to normal walkways,

(o) No common wall between filtered and unfiltered water shall exist. This requirement may be waived by the Executive Secretary for small "package" type plants using metal tanks of sufficient thickness,

(p) Filtration to waste for each filter.

(7) Backwash.

(a) Water Backwash Without Air.

Water backwash systems shall be designed so that backwash water is not recycled to the head of the treatment plant unless it has been settled, as a minimum. Furthermore, water backwash systems; including tanks, pumps and pipelines, shall:

(i) Provide a minimum backwash rate of 15 gpm/sf, consistent with water temperatures and the specific gravity of the filter media. The design shall provide for adequate backwash with minimum media loss. A reduced rate of 10 gpm/sf may be acceptable for full depth anthracite or granular activated carbon filters.

(ii) provide finished drinking water at the required rate by washwater tanks, a washwater pump, from the high service main, or a combination of these.

(iii) Permit the backwashing of any one filter for not less than 15 minutes.

(iv) Be capable of backwashing at least two filters, consecutively.

(v) Include a means of varying filter backwash rate and time.

(vi) Include a washwater regulator or valve on the main washwater line to obtain the desired rate of filter wash with washwater valves or the individual filters open wide.

(vii) Include a rate of flow indicator, preferably with a totalizer on the main washwater line, located so that it can be easily read by the operator during the washing process.

(viii) Be designed to prevent rapid changes in backwash water flow.

(ix) Use only finished drinking water.

(x) Have washwater pumps in duplicate unless an alternate means of obtaining washwater is available.

(xi) Perform in conjunction with "filter to waste" system to allow filter to stabilize before introduction into clearwell.

(b) Backwash with Air Scouring.

Air scouring can be considered in place of surface wash when:

(i) air flow for air scouring the filter must be 3 to 5 scfm/sf of filter area when the air is introduced in the underdrain; a lower air rate must be used when the air scour distribution system is placed above the underdrains,

(ii) a method for avoiding excessive loss of the filter media during backwashing must be provided,

(iii) air scouring must be followed by a fluidization wash sufficient to re-stratify the media,

(iv) air must be free from contamination,

(v) air scour distribution systems shall be placed below the media and supporting bed interface; if placed at the interface the air scour nozzles shall be designed to prevent media from clogging the nozzles or entering the air distribution system.

(vi) piping for the air distribution system shall not be flexible hose which will collapse when not under air pressure and shall not be a relatively soft material which may erode at the orifice opening with the passage of air at high velocity.

(vii) air delivery piping shall not pass down through the filter media nor shall there be any arrangement in the filter design which would allow short circuiting between the applied unfiltered water and the filtered water,

(viii) consideration shall be given to maintenance and replacement of air delivery piping,

(ix) when air scour is provided the backwash water rate shall be variable and shall not exceed eight gpm/sf unless operating experience shows that a higher rate is necessary to remove scoured particles from filter surfaces.

(x) the filter underdrains shall be designed to accommodate air scour piping when the piping is installed in the underdrain, and

(xi) the provisions of Section R309-525-15(7)(a) (Backwash) shall be followed.

(8) Surface Wash or Subsurface Wash.

Surface wash or subsurface wash facilities are required except for filters used exclusively for iron or manganese removal. Washing may be accomplished by a system of fixed nozzles or a revolving-type apparatus, provided:

(a) Provisions for water pressures of at least 45 psi,

(b) A properly installed vacuum breaker or other approved device to prevent back-siphonage if connected to a finished drinking water system,

(c) All washwater must be finished drinking water,

(d) Rate of flow of two gpm/sf of filter area with fixed nozzles or 0.5 gpm/sf with revolving arms.

(9) Washwater Troughs.

Washwater troughs shall be so designed to provide:

(a) The bottom elevation above the maximum level of expanded media during washing,

(b) A two inch freeboard at the maximum rate of wash,

(c) The top edge level and all edges of trough at the same elevation

(d) Spacing so that each trough serves the same number of square feet of filter areas,

(e) Maximum horizontal travel of suspended particles to reach the trough not to exceed three feet.

(10) Appurtenances.

(a) The following shall be provided for every filter:

(i) Sample taps or means to obtain samples from influent and effluent,

(ii) A gauge indicating loss of head,

(iii) A meter indicating rate-of-flow. A modified rate controller which limits the rate of filtration to a maximum rate may be used. However, equipment that simply maintains a constant water level on the filters is not acceptable, unless the rate of flow onto the filter is properly controlled,

(iv) A continuous turbidity monitoring device where the filter is to be loaded at a rate greater than three gpm/sf

(v) Provisions for draining the filter to waste with appropriate measures for backflow prevention (see R309-525-23).

(i) Wall sleeves providing access to the filter interior at several locations for sampling or pressure sensing,

(ii) A 1.0 inch to 1.5 inch diameter pressure hose and storage rack at the operating floor for washing filter walls.

(11) Miscellaneous.

Roof drains shall not discharge into filters or basins and conduits preceding the filters.

**R309-525-16. In-Plant Finished Drinking Water Storage.**

(1) General.

In addition to the following, the applicable design standards of R309-545 shall be followed for plant storage.

(a) Backwash Water Tanks.

Backwash water tanks shall be sized, in conjunction with available pump units and finished water storage, to provide the backwash water required by R309-525-15(7). Consideration shall be given to the backwashing of several filters in rapid succession.

(b) Clearwell.

Clearwell storage shall be sized, in conjunction with

distribution system storage, to relieve the filters from having to follow fluctuations in water use.

(i) When finished water storage is used to provide the contact time for chlorine (see R309-520-10(1)(f), especially sub-section (f)(iv)), special attention must be given to size and baffling.

(ii) To ensure adequate chlorine contact time, sizing of the clearwell shall include extra volume to accommodate depletion of storage during the nighttime for intermittently operated filtration plants with automatic high service pumping from the clearwell during non-treatment hours.

(iii) An overflow and vent shall be provided.

(2) Adjacent Compartments.

Finished drinking water shall not be stored or conveyed in a compartment adjacent to unsafe water when the two compartments are separated by a single wall. The Executive Secretary may grant an exception to this requirement for small "package" treatment plants using metal tanks of sufficient wall thickness.

(3) Basins and Wet-Wells.

Receiving basins and pump wet-wells for finished drinking water shall be designed as drinking water storage structures. (See Section R309-545)

**R309-525-17. Miscellaneous Plant Facilities.**

(1) Laboratory.

Sufficient laboratory equipment shall be provided to assure proper operation and monitoring of the water plant. A list of required laboratory equipment is:

(a) one floc testing apparatus with illuminated base and variable speed stirrer,

(b) 10 each 1000 ml Griffin beakers (plastic is highly recommended over glass to prevent breakage),

(c) one 1000 ml graduated cylinder (plastic is highly recommended over glass to prevent breakage),

(d) pH test strips (6.0 to 8.5),

(e) five wide mouth 25 ml Mohr pipets,

(f) one triple beam, single pan or double pan balance with 0.1 g sensitivity and 2000 g capacity (using attachment weights),

(g) DPD chlorine test kit,

(h) bench-top turbidimeter,

(i) five each 1000 ml reagent bottles with caps,

(j) dish soap,

(k) brush (2 3/4 inch diameter by 5 inch),

(l) one platform scale 1/2 lb sensitivity, 100 lb capacity,

(m) book - Simplified Procedures for Water Examination, AWWA Manual M12

(2) Continuous Turbidity Monitoring and Recording Equipment.

Continuous turbidity monitoring and recording facilities shall be located as specified in R309-215-9.

(3) Sanitary and Other Conveniences.

All treatment plants shall be provided with finished drinking water, lavatory and toilet facilities unless such facilities are otherwise conveniently available. Plumbing must conform to the Utah Plumbing Code and must be so installed to prevent contamination of a public water supply.

**R309-525-18. Sample Taps.**

Sample taps shall be provided so that water samples can be obtained from appropriate locations in each unit operation of treatment. Taps shall be consistent with sampling needs and shall not be of the petcock type. Taps used for obtaining samples for bacteriological analysis shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing type, and shall not have a screen, aerator, or other such appurtenance.

**R309-525-19. Operation and Maintenance Manuals.**

Operation and maintenance manuals shall be prepared for the treatment plant and found to be acceptable by the Executive Secretary. The manuals shall be usable and easily understood. They shall describe normal operating procedures, maintenance procedures and emergency procedures.

maintained. As a minimum, this shall include turbidimeters.

**KEY: drinking water, flocculation, sedimentation, filtration**  
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**R309-525-20. Operator Instruction.**

Provisions shall be made for operator instruction at the start-up of a plant.

**R309-525-21. Safety.**

All facilities shall be designed and constructed with due regard for safety, comfort and convenience. As a minimum, all applicable requirements of Utah Occupational Safety and Health Act (UOSHA) must be adhered to.

**R309-525-22. Disinfection Prior To Use.**

All pipes, tanks, and equipment which can convey or store finished drinking water shall be disinfected in accordance with the following AWWA procedures:

- (1) C651-05 Disinfecting Water Mains
- (2) C652-02 Disinfection of Water Storage Facilities
- (3) C653-03 Disinfection of Water Treatment Plants

**R309-525-23. Disposal of Treatment Plant Waste.**

Provisions must be made for proper disposal of water treatment plant waste such as sanitary, laboratory, sludge, and filter backwash water. All waste discharges and treatment facilities shall meet the requirements of the plumbing code, the Utah Department of Environmental Quality, the Utah Department of Health, and the United States Environmental Protection Agency, including the following:

- (1) Rules for Onsite Wastewater Disposal Systems, Utah Administrative Code R317-4.
- (2) Rules for Water Quality, Utah Administrative Code R317.
- (3) Rules for Solid and Hazardous Waste, Utah Administrative Code R315.

In locating waste disposal facilities, due consideration shall be given to preventing potential contamination of a water supply as well as breach or damage due to environmental factors.

**R309-525-24. Other Considerations.**

Consideration shall be given to the design requirements of other federal, state, and local regulatory agencies for items such as safety requirements, special designs for the handicapped, plumbing and electrical codes, construction in the flood plain, etc.

**R309-525-25. Operation and Maintenance.**

(1) Water system operators must determine that all chemicals added to water intended for human consumption are suitable for drinking water use and comply with ANSI/NSF Standard 60.

(2) No chemicals or other substances may be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Executive Secretary. The Executive Secretary shall be notified prior to the changing of primary coagulant type. The Executive Secretary may require documentation to verify that sufficient testing and analysis have been done. The primary coagulant may not be changed without prior approval from the Executive Secretary.

(3) During the operation of a conventional surface water treatment plant stable flow rates shall be maintained through the filters.

(4) All instrumentation needed to verify that treatment processes are sufficient shall be properly calibrated and

**R309. Environmental Quality, Drinking Water.****R309-530. Facility Design and Operation: Alternative Surface Water Treatment Methods.****R309-530-1. Purpose.**

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

**R309-530-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-530-3. Definitions.**

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

**R309-530-4. General.****(1) Alternative Methods.**

In addition to conventional surface water treatment method (i.e. coagulation, sedimentation and filtration as outlined in R309-525), several alternative methods may also be suitable. They are: Direct Filtration; Slow Sand Filtration; Membrane Filtration; and Diatomaceous Earth Filtration.

**(2) Incorporation of Other Rules.**

For each process described in this section pertinent rules are given. The designer shall also incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics shall be addressed:

- (a) Plant Siting (see R309-525-6).
- (b) Pre-design Submittal (see R309-515-5(2)).
- (c) Plant Reliability (see R309-525-7).
- (d) Color Coding and Pipe Marking (see R309-525-8).
- (e) Chemical Addition (see R309-525-11).
- (f) Miscellaneous Plant Facilities (see R309-525-17, particularly sub-section R309-525-17(1), Laboratory).
- (g) Operation and Maintenance Manuals (see R309-525-19).
- (h) Safety (see R309-525-21).
- (i) Disposal of Treatment Plant Waste (see R309-525-23).
- (j) Disinfection (see R309-520).

**R309-530-5. Direct Filtration.****(1) Chemical Addition and Mixing.**

Direct Filtration is conventional surface water treatment without the sedimentation process. Rules for Chemical Addition and Mixing shall be the same as found in sections R309-525-11 and R309-525-12.

**(2) Source Water Quality.**

Direct Filtration applies the destabilized colloids to the filter rather than removing the majority of the load through sedimentation. While this process represents considerable construction cost savings, the source water must have low average turbidity in order to provide reliable service without excessive backwash requirements. Source water with low average turbidity is generally only obtained from large capacity reservoirs.

**(3) Design Requirements.**

The following requirements shall apply to Direct Filtration plants:

(a) At least one year's record of source water turbidity, sampled at least once per week, shall be presented to the Executive Secretary. A Direct Filtration facility will only be permitted if the data shows that 75% of the measurements are below five (5) NTU. The Executive Secretary shall judge whether Direct Filtration is suitable given the quality of the proposed source water (see R309-515-5(2)(a)(ii)).

(b) Pilot plant studies, acceptable to the Executive Secretary, shall be conducted prior to the preparation of final engineering plans.

(c) Requirements for flash mix and flocculation basin design are given in sub-sections R309-525-12(1) and R309-525-12(2).

(d) Chemical addition and mixing equipment shall be designed to be capable of providing a visible, but not necessarily settleable, floc.

(e) Surface wash, subsurface wash, or air scour shall be provided for the filters in accordance with sub-section R309-525-15(7).

(f) A continuous monitoring turbidimeter shall be installed on each filter effluent line and shall be of a type with at least two alarm conditions capable of meeting the requirements of subsections R309-525-15(4)(b)(vi) or R309-525-15(4)(c)(vii). The combined plant effluent shall be equipped with a continuous turbidimeter having a chart recorder. Additional monitoring equipment to assist in control of the coagulant dose may be required (i.e. streaming current gauges, particle counters, etc.) if the plant cannot consistently meet the requirements of rule R309-200.

(g) In addition to the alarm conditions required above, the plant shall be designed and operated so that the plant will automatically shut down when a source water turbidity of 20 NTU lasts longer than three hours, or when the source water turbidity exceeds 30 NTU at any time.

(h) The plant design and land ownership surrounding the plant shall allow for the installation of conventional sedimentation basins. Sedimentation basins may be required if the Executive Secretary determines the plant is failing to meet minimum water quality or performance standards.

**R309-530-6. Slow Sand Filtration.****(1) Acceptability.**

Slow sand filtration means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particle removal by physical and biological mechanisms. The acceptability of slow sand filters as a substitute for "conventional surface water treatment" facilities (detailed in R309-525) shall be determined by the Executive Secretary based on suitability of the source water and demand characteristics of the system.

**(2) Source Water Quality.**

The Executive Secretary may impose design requirements in addition to those listed herein, in allowing this process. The following shall be considered, among other factors, in determining whether slow sand filtration will be acceptable:

(a) Source water turbidity must be low and consistent. Slow Sand Filtration shall be utilized only when the source waters have turbidity less than 50 NTU and color less than 30 units (see R309-515-5(2)(a)).

(b) The nature of the turbidity particles shall be considered. Turbidity must not be attributable to colloidal clay.

(c) The nature and extent of algae growths in the raw water shall be considered. Algae must not be a species considered as filter and screen-clogging algae as indicated in "Standard Methods for the Examination of Water and Wastewater" prepared and published jointly by American Public Health Association, American Water Works Association, and Water Environment Federation. High concentrations of algae in the raw water can cause short filter runs; the amount of algae,

expressed as the concentration of chlorophyll "a" in the raw water shall not exceed 0.005 mg/l.

(3) Pilot Plant Studies.

The Executive Secretary shall allow the use of Slow Sand Filtration only when the supplier's engineering studies show that the slow sand facility can consistently produce an effluent meeting the quality requirements of rule R309-200. The Executive Secretary should be consulted prior to the detailed design of a slow sand facility.

(4) Operation.

Effluent from a Slow Sand Filtration facility shall not be introduced into a public water supply until an active biological mat has been created on the filter.

(5) Design requirements.

The following design parameters shall apply to each Slow Sand Filtration plant:

(a) At least three filter units shall be provided. Where only three units are provided, any two shall be capable of meeting the plant's design capacity (normally the projected "peak daily flow") at the approved filtration rate. Where more than three filter units are provided, the filters shall be capable of meeting the plant design capacity at the approved filtration rate with any one filter removed from service.

(b) All filters shall be protected to prevent freezing. If covered by a structure, enough headroom shall exist to permit normal movement by operating personnel for scraping and sand removal operations. There shall be adequate manholes and access ports for the handling of sand. An overflow at the maximum filter water level shall be provided.

(c) The permissible rates of filtration shall be determined by the quality of the source water and shall be determined by experimental data derived during pilot studies conducted on the source water. Filtration rates of 0.03 gpm/sf to 0.1 gpm/sf shall be acceptable (equivalent to two to six million gallons per day per acre). Somewhat higher rates may be acceptable when demonstrated to the satisfaction of the Executive Secretary.

(d) Each filter unit shall be equipped with a main drain and an adequate number of lateral underdrains to collect the filtered water. The underdrains shall be so spaced that the maximum velocity of the water flow in the underdrain will not exceed 0.75 fps. The maximum spacing of the laterals shall not exceed three feet if pipe laterals are used.

(e) Filter sand shall be placed on graded gravel layers for an initial filter sand depth of 30 inches. A minimum of 24 inches of filter sand shall be present, even after scraping. The effective size of the filter sand shall be between 0.30 mm and 0.45 mm in diameter. The filter sand uniformity coefficient shall not exceed 2.5. Further, the sand shall thoroughly washed and found to be clean and free from foreign matter.

(f) A three-inch layer of well rounded sand shall be used as a supporting media for filter sand. It shall have an effective size of 0.8 mm to 2.0 mm in diameter and the uniformity coefficient shall not be greater than 1.7.

(g) A supporting gravel media shall be provided. It shall consist of hard, durable, rounded silica particles and shall not include flat or elongated particles. The coarsest gravel shall be 2.5 inches in size when the gravel rests directly on the strainer system, and must extend above the top of the perforated laterals. Not less than four layers of gravel shall be provided in accordance with the following size and depth distribution when used with perforated laterals:

TABLE 530-1

Size	Depth
2 1/2 to 1 1/2 inches	5 to 8 inches
1 1/2 to 3/4 inches	3 to 5 inches
3/4 to 1/2 inches	3 to 5 inches
1/2 to 3/16 inches	2 to 3 inches
3/16 to 3/32 inches	2 to 3 inches

Reduction of gravel depths may be considered upon justification to the Executive Secretary when proprietary filter bottoms are specified.

(h) Slow sand filters shall be designed to provide a depth of at least three to five feet of water over the sand.

(i) Each filter shall be equipped with: a loss of head gauge; an orifice, venturi meter, or other suitable metering device installed on each filter to control the rate of filtration; and an effluent pipe designed to maintain the water level above the top of the filter sand.

(j) Disinfection of the effluent of Slow Sand Filtration plants will be required.

(k) A filter-to-waste provision shall be included.

(l) Electrical power shall be available at the plant site.

**R309-530-7. Diatomaceous Earth Filtration.**

The use of Diatomaceous Earth Filtration units may be considered for application to surface waters with low turbidity and low bacterial contamination, and additionally may be used for iron removal for groundwaters of low quality, providing the removal is effective and the water is of sanitary quality before treatment.

The acceptability of Diatomaceous Earth Filtration as a substitute for "conventional surface water treatment" facilities (detailed in rule R309-525) shall be determined by the Executive Secretary. Determination may be based on the level of support previously exhibited by the public water system management along with a finding by the Executive Secretary that "conventional surface water treatment" or other methods herein described are too costly or unacceptable.

Diatomaceous Earth Filtration consists of a process to remove particles from water wherein a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the source water to maintain the permeability of the filter cake. Diatomite filters are characterized by rigorous operating requirements, high operating costs, and increased sludge production.

Part 4, Section 4.2.3, Diatomaceous Earth Filtration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and shall govern the design and operation of diatomaceous earth filtration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-530-8. Membrane Technology.**

(1) Acceptability.

Surface waters, or groundwater under the direct influence of surface water (UDI), may be treated using membrane technology (microfiltration, ultrafiltration, nanofiltration) coupled with "primary and secondary disinfection."

(2) Pilot Plant Study.

Because this is a relatively new technology, appropriate investigation shall be conducted by the public water system to assure that the process will produce the required quality of water at a cost which can be borne by the public water system consumers. A pilot plant study shall be conducted prior to the commencement of design. The study must be conducted in accordance with EPA's Environmental Technology Verification Program (ETV) or the protocol and treated water parameters must be approved prior to conducting any testing by the Executive Secretary.

(3) Design Requirements.

The following items shall be addressed in the design of any membrane technology plant intended to provide microbiological treatment of surface waters or groundwater "UDI:"



(a) The facility shall be equipped with an on-line particle counter on the final effluent.

(b) The facility shall be equipped with an automatic membrane integrity test system.

(4) The Executive Secretary shall establish the turbidity limit for 95% of turbidity measurements and the maximum turbidity limit which shall not be exceeded. The plant effluent shall meet the requirements of R309-200-5(5)(a)(ii).

**R309-530-9. New Treatment Processes or Equipment.**

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. Refer to EPA's Environmental Technology Verification Program (ETV).

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Executive Secretary that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

The Executive Secretary shall establish the turbidity limit for 95% of turbidity measurements and the maximum turbidity limit which shall not be exceeded. The plant effluent shall meet the requirements of R309-200-5(5)(a)(ii).

**KEY: drinking water, direct filtration, slow sand filtration, membrane technology**

**April 27, 2009**

**19-4-104**

**Notice of Continuation March 22, 2010**

**R309. Environmental Quality, Drinking Water.****R309-535. Facility Design and Operation: Miscellaneous Treatment Methods.****R309-535-1. Purpose.**

The purpose of this rule is to provide specific requirements for miscellaneous water treatment methods which are primarily intended to remove chemical contaminants from drinking water; or, adjust the chemical composition of drinking water. It is intended to be applied in conjunction with other rules, specifically R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-535-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-535-3. Definitions.**

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

**R309-535-4. General.**

For each process described in this section pertinent rules are given. The designer must also, however, incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics must be addressed:

- (1) Plant Siting (see R309-525-6).
- (2) Plant Reliability (see R309-525-7).
- (3) Color Coding and Pipe Marking (see R309-525-8).
- (4) Chemical Addition (see R309-525-11).
- (5) Miscellaneous Plant Facilities (see R309-525-17, particularly sub-section R309-525-17(1), Laboratory).
- (6) Operation and Maintenance Manuals (see R309-525-19).
- (7) Safety (see R309-525-21).
- (8) Disposal of Treatment Plant Waste (see R309-525-23).
- (9) Disinfection (see R309-520).

**R309-535-5. Fluoridation.**

Sodium fluoride, sodium silicofluoride and fluorosilicic acid shall conform to the applicable AWWA standards and/or ANSI/NSF Standard 60. Other fluoride compounds which may be available must be approved by the Executive Secretary.

- (1) Fluoride compound storage.

Fluoride chemicals should be isolated from other chemicals to prevent contamination. Compounds shall be stored in covered or unopened shipping containers and should be stored inside a building. Unsealed storage units for fluorosilicic acid should be vented to the atmosphere at a point outside any building. Bags, fiber drums and steel drums should be stored on pallets.

- (2) Chemical feed equipment and methods.

In addition to the requirements in R309-525-11 "Chemical Addition", fluoride feed equipment shall meet the following requirements:

(a) scales, loss-of-weight recorders or liquid level indicators, as appropriate, accurate to within five percent of the average daily change in reading shall be provided for chemical feeds,

(b) feeders shall be accurate to within five percent of any desired feed rate,

(c) fluoride compound shall not be added before lime-soda softening or ion exchange softening,

(d) the point of application of fluorosilicic acid, if into a horizontal pipe, shall be in the lower half of the pipe,

(e) a fluoride solution shall be applied by a positive displacement pump having a stroke rate not less than 20 strokes per minute,

(f) a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines,

(g) a device to measure the flow of water to be treated is required,

(h) the dilution water pipe shall terminate at least two pipe diameters above the solution tank,

(i) water used for sodium fluoride dissolution shall be softened if hardness exceeds 75 mg/l as calcium carbonate,

(j) fluoride solutions shall be injected at a point of continuous positive pressure or a suitable air gap provided,

(k) the electrical outlet used for the fluoride feed pump should have a nonstandard receptacle and shall be interconnected with the well or service pump,

(l) saturators should be of the upflow type and be provided with a meter and backflow protection on the makeup water line.

(m) lead weights shall not be used in fluoride chemical solutions to keep pump suction lines at the bottom of a day or bulk storage tank.

- (3) Secondary controls.

Secondary control systems for fluoride chemical feed devices shall be provided as a means of reducing the possibility for overfeed; these may include flow or pressure switches or other devices.

- (4) Protective equipment.

Personal protective equipment as outlined in R309-525-11(10) shall be provided for operators handling fluoride compounds. Deluge showers and eye wash devices shall be provided at all fluorosilicic acid installations.

- (5) Dust control.

Provision must be made for the transfer of dry fluoride compounds from shipping containers to storage bins or hoppers in such a way as to minimize the quantity of fluoride dust which may enter the room in which the equipment is installed. The enclosure shall be provided with an exhaust fan and dust filter which place the hopper under a negative pressure. Air exhausted from fluoride handling equipment shall discharge through a dust filter to the outside atmosphere of the building.

(b) Provision shall be made for disposing of empty bags, drums or barrels in a manner which will minimize exposure to fluoride dusts. A floor drain should be provided to facilitate the hosing of floors.

- (6) Testing equipment.

Equipment shall be provided for measuring the quantity of fluoride in the water. Such equipment shall be subject to the approval of the Executive Secretary.

**R309-535-6. Taste and Odor Control.**

Part 4, Section 4.9, Taste and Odor Control, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and shall govern the design and operation of taste and odor control facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-535-7. Stabilization.**

Part 4, Section 4.8, Stabilization, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and it shall govern the design and operation of stabilization

facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

#### **R309-535-8. Deionization.**

Current practical methods of deionization include Ion Exchange, Reverse Osmosis and Electrodialysis. Additional methods of deionization may be approved subject to the presentation of evidence of satisfactory reliability.

All properly developed groundwater sources having water quality exceeding 2,000 mg/l Total Dissolved Solids and/or 500 mg/l Sulfate shall be either properly diluted or treated by the methods outlined in this section. Deionization cannot be considered a substitute process for conventional complete treatment outlined in R309-525.

(1) Ion Exchange.

(a) General.

Great care shall be taken by the designer to avoid loading the media with water high in organics.

(b) Design.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Upflow or down flow units are acceptable.

(iii) Exchangers shall have at least a three foot media depth.

(iv) Exchangers shall be designed to meet the recommendations of the media manufacturer with regard to flow rate or contact time. In any case, flow shall not exceed seven gpm/sf of bed area. The plant shall be provided with an influent or effluent meter as well as a meter on any bypass line.

(v) Chemical feeders used shall conform with R309-525-8. All solution tanks shall be covered.

(vi) Regenerants added shall be uniformly distributed over the entire media surface of upflow or downflow units. Regeneration shall be according to the media manufacturer's recommendations.

(vii) The wash rate capability shall be in excess of the manufacturers recommendation and should be at least six to eight gpm/sf of bed area.

(viii) Disinfection (see R309-520) shall be required ahead of the exchange units where this does not interfere with the media.

Where disinfection interferes with the media, disinfection shall follow the treatment process.

(c) Waste Disposal.

Waste generated by ion exchange treatment shall be disposed of in accordance with R309-525-23.

(2) Reverse Osmosis.

(a) General.

The design shall permit the easy exchange of modules for cleaning or replacement.

(b) Design Criteria.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Required equipment includes the following items: pressure gauges on the upstream and downstream side of the filter; a conductivity meter present at the site; taps for sampling permeate, concentrate and blended flows (if practiced). If a continuous conductivity meter is permanently installed, piping shall be such that the meter can be disconnected and calibrated with standard solutions at a frequency as recommended by the manufacturer.

(iii) Aeration, if practiced, shall conform with provisions of R309-535-9.

(iv) Cleaning shall be routinely done in accordance with the manufacturer's recommendations.

(v) Where the feed water pH is altered, stabilization of the finished water is mandatory.

(c) Waste Disposal.

Waste generated by reverse osmosis treatment shall be disposed of in accordance with R309-525-23.

(3) Electrodialysis.

(a) General.

(b) Design.

(i) Pretreatment shall be provided per the manufacturers recommendation.

(ii) The design shall include ability to: measure plant flow rates; measure feed temperature if the water is heated (a high temperature automatic cutoff is required to prevent membrane damage); measure D.C voltage at the first and second stages as well as on each of the stacks. Sampling taps shall be provided to measure the conductivity of the feed water, blowdown water, and product water. D.C. and A.C. kilowatt-hour meters to record the electricity used shall also be provided.

(c) Waste Disposal.

Waste generated by electrodialysis treatment shall be disposed of in accordance with R309-525-23.

#### **R309-535-9. Aeration.**

Part 4, Section 4.5, Aeration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition, is hereby incorporated by reference and shall govern the design and operation of aeration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

#### **R309-535-10. Softening.**

Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition, is hereby incorporated by reference and shall govern the design and operation of softening facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

#### **R309-535-11. Iron and Manganese Control.**

Iron and manganese control, as used herein, refers solely to treatment processes designed specifically for this purpose. The treatment process used will depend upon the character of the source water. The selection of one or more treatment processes shall meet specific local conditions as determined by engineering investigations, including chemical analyses of representative samples of water to be treated, and receive approval of the Executive Secretary. It may be necessary to operate a pilot plant in order to gather all information pertinent to the design. Consideration should be given to adjust the pH of the raw water to increase the rate of the chemical reactions involved.

Removal or treatment of iron and manganese are normally by the following methods:

(1) Removal by Oxidation, Detention and Filtration.

(a) Oxidation.

Oxidation may be by aeration, or by chemical oxidation with chlorine, potassium permanganate, ozone or chlorine dioxide.

(b) Detention.

(i) Reaction time - A minimum detention time of twenty minutes shall be provided following aeration in order to insure that the oxidation reactions are as complete as possible. This minimum detention may be omitted only where a pilot plant study indicates no need for detention. The detention basin shall be designed as a holding tank with no provisions for sludge collection but with sufficient baffling to prevent short circuiting.

(ii) Sedimentation - Sedimentation basins shall be

provided when treating water with high iron and/or manganese content, or where chemical coagulation is used to reduce the load on the filters. Provisions for sludge removal shall be made.

(c) Filtration.

(i) General - Minimum criteria relative to number, rate of filtration, structural details and hydraulics, filter media, etc., provided for rapid rate gravity filters shall apply to pressure filters where appropriate, and may be used in this application but cannot be used in the filtration of surface waters or following lime-soda softening.

(ii) Details of Design for Pressure Filter - The filters shall be designed to provide for:

(A) Loss of head gauges on the inlet and outlet pipes of each filter,

(B) An easily readable meter or flow indicator on each battery of filters,

(C) Filtration and backwashing of each filter individually with an arrangement of piping as simple as possible to accomplish these purposes,

(D) The top of the washwater collectors to be at least twenty-four (24) inches above the surface of the media,

(E) The underdrain system to efficiently collect the filtered water and to uniformly distribute the backwash water at a rate capable of not less than 15 gpm/sf of filter area,

(F) Backwash flow indicators and controls that are easily readable while operating the control valves,

(G) An air release valve on the highest point of each filter,

(H) An accessible manhole to facilitate inspections and repairs,

(I) Means to observe the wastewater and filters during backwashing, and

(J) Construction to prevent cross-connection.

(2) Removal by the Lime-soda Softening Process.

For removal by the lime-soda softening process refer to Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition as indicated in R309-535-10.

(3) Removal by Manganese Greensand Filtration.

This process, consisting of the continuous feed of potassium permanganate to the influent of a manganese greensand filter, is more applicable to the removal of manganese than the removal of iron.

(a) Provisions shall be made to apply the permanganate as far ahead of the filter as practical and at a point immediately before the filter.

(b) An anthracite media cap of at least six inches shall be provided over manganese greensand.

(c) The normal filtration rate is three gpm/sf.

(d) The normal wash rate is 8 to 10 gpm/sf.

(e) Air washing shall be provided.

(f) Sample taps shall be provided:

(i) prior to application of permanganate,

(ii) immediately ahead of filtration,

(iii) at a point between the anthracite media and the manganese greensand,

(iv) halfway down the manganese greensand, and

(v) at the filter effluent.

(4) Removal by Ion Exchange.

This process is not acceptable where either the source water or wash water contains dissolved oxygen.

(5) Sequestration by Polyphosphates.

This process shall not be used when iron, manganese or a combination thereof exceeds 1.0 milligram per liter. The total phosphate applied shall not exceed 10 milligrams per liter as  $PO_4$ . Where phosphate treatment is used, satisfactory chlorine residuals shall be maintained in the distribution system and the following required:

(a) feeding equipment shall conform to the requirements of R309-525-11(7),

(b) stock phosphate solution shall be kept covered and disinfected by carrying approximately 10 mg/l free chlorine residual,

(c) polyphosphates shall not be applied ahead of iron and manganese removal treatment. If no iron or manganese removal treatment is provided, the point of application shall be prior to any aeration, oxidation or disinfection steps, and

(d) phosphate chemicals must comply with ANSI/NSF Standard 60.

Sampling taps shall be provided for control purposes. Taps shall be located on each raw water source, and on each treatment unit influent and effluent.

Waste generated by iron and manganese control treatment shall be disposed of in accordance with R309-525-23.

### R309-535-12. Point-of-Use and Point-of-Entry Treatment Devices.

Where drinking water does not meet the quality standards of R309-200 and the available water system treatment methods are determined to be unreasonably costly or otherwise undesirable, the Executive Secretary may permit the public water supplier to install and maintain point-of-use or point-of-entry treatment devices. This approval shall only be given after receipt and satisfactory review of the following items.

(1) The Executive Secretary shall only consider approving point-of-use or point-of-entry treatment upon receipt of an analysis that clearly demonstrates that central treatment is not feasible for the public water system. Unless waived by the Executive Secretary, this analysis shall be in the form of an engineering report prepared by a professional engineer registered in the State of Utah. Systems serving fewer than 75 connections are excused from performing an analysis by a Registered Professional Engineer.

(2) The water system shall have a signed access agreement with each customer that allows water system personnel to enter their property on a scheduled basis to install and maintain the treatment devices. The agreement shall include educational information with regard to the health risks of consuming or cooking with water from non-treated taps. Systems with an initial 75% of their connections under a signed access agreement shall be allowed to proceed with the understanding that 100% of their connections are due within a 5 year period. For public water systems that own or control all connections to the public water system, this requirement will not apply.

(3) Documentation that legal authority, which includes a termination of service clause, has been adopted to ensure water system access to the property for installation, maintenance, servicing and sampling of each treatment unit. For public water systems that own or control all connections to the public water system, this requirement will not apply.

(4) Point-of-use or point-of-entry treatment devices used shall only be those proven to be appropriate, safe and effective as determined through testing and compliance with protocols established by EPA's Environmental Technology Verification Program (ETV) or the applicable ANSI/NSF Standard(s). A pilot study may be required to determine the suitability of the point-of-use or point-of-entry device in treating a particular source water. The scope and duration of the pilot study shall be determined by such factors as the characteristics of the raw water, manufacturer's ratings of the treatment device, and good engineering practices. The pilot study will generate data on service intervals, aid in specifying and calibrating alarm systems, and reveal any site specific problems with component fouling or microbial colonization.

(5) The water system shall provide an operation and maintenance plan demonstrating that the treatment units shall be installed and serviced in accordance with the manufacturer's instructions and that compliance sampling as required in R309-215-6 shall take place. The system shall provide documentation

of an operation and maintenance contract or schedule annually as required in R309-105-16(4). If the operation and maintenance of the POU/POE devices is performed by water system personnel, it shall only be performed by a water operator certified at the level of the water system.

(6) The performance indicating device for the point-of-use/point-of-entry treatment device that will be used shall be specified in the submittal for plan approval.

(7) The water system shall submit a customer education and out-reach plan that includes at a minimum annual frequency of contact.

(8) Point-of-use or point-of-entry treatment devices for compliance with the nitrate MCL shall only be considered if treatment is provided at all taps that are accessible to the public.

**R309-535-13. New Treatment Processes or Equipment.**

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. The U.S. Environmental Protection Agency (EPA) has created the Environmental Technology Verification (ETV) Program to facilitate the deployment of innovative or improved environmental technologies through performance verification and dissemination of information. NSF International (NSF) in cooperation with the EPA operates the Package Drinking Water Treatment Systems (PDWTS) pilot, one of 12 technology areas under ETV. Engineers and Manufacturers are referred to Manager, ETV project, NSF International, P.O. Box 130140, Ann Arbor, Michigan 48113-0140.

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Executive Secretary that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

**KEY: drinking water, miscellaneous treatment, stabilization, iron and manganese control**  
**November 16, 2005** **19-4-104**  
**Notice of Continuation March 22, 2010**

**R309. Environmental Quality, Drinking Water.****R309-540. Facility Design and Operation: Pump Stations.****R309-540-1. Purpose.**

The purpose of this rule is to provide specific requirements for pump stations utilized to deliver drinking water to facilities of public water systems. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-540-2. Authority.**

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

**R309-540-3. Definitions.**

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

**R309-540-4. General.**

Pumping stations shall be designed to maintain the sanitary quality of water and to provide ample quantities of water at sufficient pressure.

**R309-540-5. Pumping Facilities.**

## (1) Location.

(a) The pumping station shall be designed such that:

(i) the proposed site will meet the requirements for sanitary protection of water quality, hydraulics of the system, and protection against interruption of service by fire, flood or any other hazard;

(ii) the access to the pump station shall be six inches above the surrounding ground and the station located at an elevation which is a minimum of three feet above the 100-year flood elevation, or three feet above the highest recorded flood elevation, which ever is higher, or protected to such elevations;

(iii) the station is readily accessible at all times unless permitted to be out of service for the period of inaccessibility;

(iv) surrounding ground is graded so as to lead surface drainage away from the station; and

(v) the station is protected to prevent vandalism and entrance by animals or unauthorized persons.

## (2) Pumping Stations.

(a) Building structures for both raw and drinking water shall:

(i) have adequate space for the installation of additional pumping units if needed, and for the safe servicing of all equipment;

(ii) be of durable construction, fire and weather resistant, with outward-opening doors;

(iii) have an interior floor elevation at least six inches above the exterior finished grade;

(iv) have any underground facilities, especially wet wells, waterproofed;

(v) have all interior floors drained in such a manner that the quality of drinking water contained in any wet wells will not be endangered. All floors shall slope at least one percent (one foot every 100 feet) to a suitable drain; and

(vi) provide a suitable outlet for drainage from pump glands without discharging onto the floor.

## (b) Suction wells shall:

(i) be watertight;

(ii) have floors sloped to permit removal of water and

entrained solids;

(iii) be covered or otherwise protected against contamination; and

(iv) have two pumping compartments or other means to allow the suction well to be taken out of service for inspection, maintenance, or repair.

(c) Servicing equipment shall consist of:

(i) crane-ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment;

(ii) openings in floors, roofs or wherever else needed for removal of heavy or bulky equipment; and

(iii) a convenient tool board, or other facilities as needed, for proper maintenance of the equipment.

(d) Stairways and ladders shall:

(i) be provided between all floors, and in pits or compartments which must be entered; and

(ii) have handrails on both sides, and treads of non-slip material. They shall have risers not exceeding nine inches and treads wide enough for safety.

(e) Heating provisions shall be adequate for:

(i) the comfort of the operator; and

(ii) the safe and efficient operation of the equipment.

(f) Ventilation shall:

(i) conform to existing local and/or state codes; and

(ii) forced ventilation of at least six changes of air per hour shall be provided for all rooms, compartments, pits and other enclosures below ground floor, and any area where unsafe atmosphere may develop or where excessive heat may be built up.

(g) Lighting.

Pump stations shall be adequately lighted throughout. All electrical work shall conform to the requirements of the relevant state and/or local building codes.

(h) Sanitary and other conveniences.

Plumbing shall be so installed as to prevent contamination of a public water supply. Wastes shall be discharged in accordance with the plumbing code, R317-4, or R317-1-3.

## (3) Pumps.

## (a) Capacity.

Capacity shall be provided such that the pump or pumps shall be capable of providing the peak day demand of the system or the specific portion of the system serviced.

The pumping units shall:

(i) have ample capacity to supply the peak day demand against the required distribution system pressure without dangerous overloading;

(ii) be driven by prime movers able to meet the maximum horsepower condition of the pumps without use of service factors;

(iii) be provided readily available spare parts and tools; and

(iv) be served by control equipment that has proper heater and overload protection for air temperature encountered.

## (b) Suction Lift.

Suction lift, where possible, shall be avoided. If suction lift is necessary, the required lift shall be within the pump manufacturer's recommended limits and provision shall be made for priming the pumps.

## (c) Priming.

Prime water shall not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent back siphonage. When an air-operated ejector is used, the screened intake shall draw clean air from a point at least 10 feet above the ground or other source.

## (4) Booster Pumps.

(a) Booster pumps shall be located or controlled so that:

(i) they will not produce negative pressure in their suction lines;

(ii) automatic cutoff pressure shall be at least 10 psi in the suction line;

(iii) automatic or remote control devices shall have a range between the start and cutoff pressure which will prevent excessive cycling; and

(iv) a bypass is available.

(b) Inline booster pumps (pumps withdrawing water directly from distribution lines without the benefit of storage and feeding such water directly into other distribution lines rather than storage), in addition to the other requirements of this section, shall have at least two pumping units (such that with any one pump out of service, the remaining pump or pumps shall be capable of providing the peak day demand of the specific portion of the system serviced), shall be accessible for servicing and repair and located or controlled so that the intake pressure shall be at least 20 psi when the pump or pumps are in normal operation.

(c) Individual home booster pumps shall not be allowed for any individual service from the public water supply main.

(5) Automatic and remote controlled stations.

All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Installation of electrical equipment shall conform with the applicable state and local electrical codes and the National Electrical Code.

(6) Appurtenances.

(a) Valves.

Valves shall be used to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least 2 1/2 times the area of the suction pipe and they shall have a positive-acting check valve on the discharge side between the pump and the shut-off valve.

(b) Piping.

Piping within and near pumping stations shall:

(i) be designed so that the friction losses will be minimized;

(ii) not be subject to contamination;

(iii) have watertight joints;

(iv) be protected against surge or water hammer; and

(v) be such that each pump has an individual suction line or that the lines shall be so manifolded that they will insure similar hydraulic and operating conditions.

(c) Gauges and Meters.

Each pump shall:

(i) have a standard pressure gauge on its discharge line;

(ii) have a compound gauge (capable of indicating negative pressure or vacuum as well as positive pressure) on its suction line; and

(iii) have recording gauges in the larger stations.

(d) Water Seal.

Where pumps utilize water seals, the seals shall:

(i) not be supplied with water of a lesser sanitary quality than that of the water being pumped; and

(ii) when pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall be provided with a break tank open to atmospheric pressure, and have an air gap of at least six inches or two pipe diameters, whichever is greater, between the feeder line and the spill line of the tank.

(e) Controls.

Controls shall be designed in such a manner that they will operate their prime movers, and accessories, at the rated capacity without dangerous overload. Where two or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Electrical controls shall be protected against flooding. Equipment shall be provided or other arrangements made to prevent surge pressures from activating

controls which switch on pumps or activate other equipment outside the normal design cycle of operation.

(f) Standby Power.

Standby power, to ensure continuous service when the primary power has been interrupted, shall be provided from at least two independent sources or a standby or an auxiliary source shall be provided. If standby power is provided by onsite generators or engines, the fuel storage and fuel line must be designed to protect the water supply from contamination.

(g) Water Pre-Lubrication.

When automatic pre-lubrication of pump bearings is necessary and an auxiliary direct drive power supply is provided, the pre-lubrication line shall be provided with a valved bypass around the automatic control so that the bearings can, if necessary, be lubricated manually before the pump is started or the pre-lubrication controls shall be wired to the auxiliary power supply.

### **R309-540-6. Hydropneumatic Systems.**

(1) General.

Hydropneumatic systems shall comply with all appropriate sections of R309-540-5 except as otherwise indicated herein.

Unpressurized ground level or elevated storage, designed in accordance with R309-545, shall be provided for community type public water systems or non-transient non-community systems where a demand in excess of the capacity of the source(s) is required, in addition to the diaphragm or air tanks. Diaphragm or air pressure tank storage shall not be considered for fire protection purposes or effective system storage for community type systems.

(2) Location.

If diaphragm or air tanks and appurtenances are located below ground, adequate provisions for drainage, ventilation, maintenance, and flood protection shall be made and the electrical controls shall be located above grade so as to be protected from flooding as required by R309-540-5(6)(e). Any discharge piping from combination air release/vacuum relief valves(air/vac's) or pressure relief valves located in below ground chambers shall comply with all the pertinent requirements of R309-550-6(6).

(3) Operating Pressures.

The system shall be designed to provide minimum pressures in R309-105-9 at all points in the distribution system. A pressure gauge shall be installed on the pressure tank inlet line.

(4) Piping.

In addition to the bypass required by R309-540-5(4)(iv) on the pumps, the diaphragm or air tanks shall have sufficient bypass piping to permit operation of the hydropneumatic system while one or more of the tanks are being repaired, replaced or painted.

(5) Pumps.

At least two pumping units shall be provided except for those type systems not requiring unpressurized storage in R309-540-6(1); they may use the pump within their groundwater source to pressurize the diaphragm or air tanks. With any pump out of service the remaining pump or pumps shall be capable of providing the peak instantaneous demand of the system as described in R309-510-9(2), while recharging the pressure tank at 115 percent of the upper pressure setting. Pump cycling shall not exceed 15 starts per hour, with a maximum of ten starts per hour preferred.

(6) Pressure Tanks.

(a) Pressure tanks shall meet the requirement of state and local laws and regulations for the manufacture and installation of unfired pressure vessels. Interior coatings or diaphragms used in pressure tanks that will come into contact with the drinking water shall comply with ANSI/NSF Standard 61. Non diaphragm pressure tanks shall have an access manhole, a drain,

control equipment consisting of pressure gauge, water sight glass, automatic or manual air blow-off, means for adding air, and pressure operated start-stop controls for the pumps.

(b) The minimum volume of the pressure tank or combination of tanks shall be greater than or equal to the sum of S and the value of CX divided by 4W.

where the following values are used in the equation above:

C = minutes per operating cycle, four minutes to meet the requirements of R309-540-6(5) above or preferably six minutes, and is equal to pump ON time plus pump OFF time.

X = output capacity rating of the pump(s) at the high pressure condition in the tank(s), in gpm.

W = percent of volume withdrawn during a given drop in tank pressure: specifically, between  $P_h$  and  $P_l$ .  $W = 100(P_h - P_l)/P_h$  where  $P_h$  = high pressure in tank in psia (high absolute pressure) and  $P_l$  = low pressure in tank in psia (low absolute pressure). Values of W range typically from 0.26 to 0.31 for pressure differentials of 15 to 30 psi and high system pressures of 45 to 85 psi at elevations of approximately 5,000 feet.

S = water seal volume in gallons, the volume of inactive water remaining in tank at low pressure condition.

(7) Air Volume.

The method of adjusting the air volume shall be acceptable to the Executive Secretary. Air delivered by compressors to the pressure tank shall be adequately filtered, oil free, and be of adequate volume. Any intake shall be screened and draw clean air from a point at least 10 feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the Executive Secretary. Discharge piping from air relief valves shall be designed and installed with screens to eliminate the possibility of contamination from this source.

(8) Water Seal.

For air pressure tanks without an internal diaphragm the volume of water remaining in a air pressure tank at the lower pressure setting shall be sufficient to provide an adequate water seal at the outlet to prevent the leakage of air.

The following water seal depths shall be considered as minimum requirements.

(a) Horizontal outlets shall maintain sufficient depth, as measured from the centerline of the horizontal outlet pipe, such that the depth is greater than or equal to the sum of d and twice the value  $v^2$  divided by 2G.

(b) Vertical outlets, if unbaffled, the depth shall be the same as in (a) except measured from the pipe outlet; if baffled, the depth shall be greater than or equal to the value  $v^2$  divided by 2G.

where the following values are used in the equations above:  
v = the axial velocity in the pipe outlet for the peak instantaneous demand flow rate of the system.

d = the diameter of the outlet pipe in ft.

G = the gravitational constant of 32.2 ft/sec/sec.

(9) Standby Power Supply.

Where a hydropneumatic system is intended to serve a public water system, categorized as a community water system as defined in R309-110, a standby source of power shall be provided.

**KEY: drinking water, pumps, hydropneumatic systems, individual home booster pumps**  
**February 15, 2009** **19-4-104**  
**Notice of Continuation March 22, 2010**



**R309. Environmental Quality, Drinking Water.****R309-545. Facility Design and Operation: Drinking Water Storage Tanks.****R309-545-1. Purpose.**

The purpose of this rule is to provide specific requirements for public drinking water storage tanks. It is intended to be applied in conjunction with other rules, specifically R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-545-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-545-3. Definitions.**

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

**R309-545-4. General.**

Storage for drinking water shall be provided as an integral part of each public drinking water system unless an exception to rule is approved by the Executive Secretary. Pipeline volume in transmission or distribution lines shall not be considered part of any storage volumes.

**R309-545-5. Size of Tank(s).**

Required Storage Capacity: In the absence of firm water use data, at or above the 90% confidence level, storage tanks shall be sized in accordance with the recommended minimums of R309-510.

**R309-545-6. Tank Material and Structural Adequacy.****(1) Materials.**

The materials used in drinking water storage structures shall provide stability and durability as well as protect the quality of the stored water. Steel tanks shall be constructed from new, previously unused, plates and designed in accordance with AWWA Standard D-100.

**(2) Structural Design.**

The structural design of drinking water storage structures shall be sufficient for the environment in which they are located. The design shall incorporate a careful analysis of potential seismic risks.

**R309-545-7. Location of Tanks.****(1) Pressure Considerations.**

The location of the reservoir and the design of the water system shall be such that the minimum working pressure in the distribution system shall meet the minimum pressures as required in R309-105-9.

**(2) Connections.**

Tanks shall be located at an elevation where present and anticipated connections can be adequately served. System connections shall not be placed at elevations such that minimum pressures as required in R309-105-9 cannot be continuously maintained.

**(3) Sewer Proximity.**

Sewers, drains, standing water, and similar sources of possible contamination shall be kept at least 50 horizontal feet from the reservoir.

**(4) Standing Surface Water.**

The area surrounding a ground-level drinking water storage structure shall be graded in a manner that will prevent surface water from standing within 50 horizontal feet of the structure.

**(5) Ability to Isolate.**

Drinking water storage structures shall be designed and located so that they can be isolated from the distribution system. Storage structures shall be capable of being drained for cleaning or maintenance without necessitating loss of pressure in the distribution system.

**(6) Earthquake and Landslide Risks.**

Potential geologic hazards shall be taken into account in selecting a tank location. Earthquake and landslide risks shall be evaluated.

**(7) Security.**

The site location and design of a drinking water storage reservoir shall take into consideration security issues and potential for vandalism.

**R309-545-8. Tank Burial.****(1) Flood Elevation.**

The bottom of drinking water storage reservoirs shall be located at least three feet above the 100 year flood level or the highest known maximum flood elevation, whichever is higher.

**(2) Ground Water.**

When the bottom of a drinking water storage reservoir is to be below normal ground surface, it shall be placed above the local ground water table elevation.

**(3) Covered Roof.**

When the roof of a drinking water storage reservoir is to be covered by earth, the roof shall be sloped to drain toward the outside edge of the tank.

**R309-545-9. Tank Roof and Sidewalls.****(1) Protection From Contamination.**

All drinking water storage structures shall have suitable watertight roofs and sidewalls which shall also exclude birds, animals, insects, and excessive dust.

**(2) Openings.**

Openings in the roof and sidewalls shall be kept to a minimum and comply with the following:

(a) Any pipes running through the roof or sidewall of a metal drinking water storage structure shall be welded, or properly gasketed. In new concrete tanks, these pipes shall be connected to standard wall castings with seepage rings which have been poured in place. Vent pipes, in addition to seepage rings, shall have raised concrete curbs which direct water away from the vent pipe and are formed as a single pour with the roof deck. No roof drains or any other pipes which may contain water of less quality than drinking water shall ever penetrate the roof, walls, or floor of a drinking water storage tank.

(b) Openings in a storage structure roof or top, designated to accommodate control apparatus or pump columns, shall be welded, gasketed, or curbed and sleeved as above, and shall have additional proper shielding to prevent vandalism.

(c) Openings shall be kept as far away as possible from the storage tank outlet and other sources of surface water.

**(3) Adjacent Compartments.**

Drinking water shall not be stored or conveyed in a compartment adjacent to wastewater when the two compartments are separated by a single wall.

**(4) Slope of Roof.**

The roof of all storage structures shall be designed for drainage. Parapets, or similar construction which would tend to hold water and snow, shall not be utilized unless adequate waterproofing and drainage are provided. Downspout or roof drain pipes shall not enter or pass through the reservoir.

**R309-545-10. Internal Features.**

The following shall apply to internal features of drinking

water storage structures:

(1) Drains.

If a drain is provided, it shall not discharge to a sanitary sewer. If local authority allows discharge to a storm drain, the drain discharge shall have a physical air gap of at least two pipe diameters between the discharge end of the pipe and the overflow rim of the receiving basin.

(2) Internal Catwalks.

Internal catwalks, if provided and located so as to be over the drinking water, shall have a solid floor with raised edges. The edges and floor shall be so designed that shoe scrapings or dirt will not fall into the drinking water.

(3) Inlet and Outlet.

To minimize potential sediment flow from the structure, the normal outlet pipes from all reservoirs shall be located in a manner to provide a silt trap prior to discharge into the distribution system.

(4) Disinfection.

If the drinking water reservoir is to be utilized as a contact basin for disinfection purposes, the design engineer shall conduct tracer studies or other tests, previously approved by the Executive Secretary, to determine the minimum contact time and the potential for short circuiting.

**R309-545-11. ANSI/NSF International, Standard 61.**

(1) ANSI/NSF Standard 61 Certification.

All interior surfaces or coatings shall consist of products which are certified by laboratories approved by ANSI and which comply with ANSI/NSF Standard 61 or other standards approved by the Executive Secretary. This requirement applies to any pipes and fittings, protective materials (e.g. paints, coatings, concrete admixtures, concrete release agents, concrete sealers), joining and sealing materials (e.g. adhesives, caulks, gaskets, primers and sealants) and mechanical devices (e.g. electrical wire, switches, sensors, valves, submersible pumps) which are located so as to come into contact with the drinking water.

(2) Curing Time and Volatile Organic Compounds.

If products which require a cure or set time are utilized in such a way as to come into contact with the drinking water, then water shall not be introduced into the vessel until any required curing time has passed. It shall be the responsibility of the water purveyor to assure that no tastes or odors, toxins or other compounds, which result in MCL exceedances, are imparted to the water as a result of tank repair.

**R309-545-12. Steel Tanks.**

(1) Paints.

Proper protection shall be given to all metal surfaces, both internal and external, by paints or other protective coatings. Internal coatings shall comply with ANSI/NSF Standard 61.

(2) Cathodic Protection.

If installed, internal cathodic protection shall be designed, installed and maintained by personnel trained in corrosion engineering.

**R309-545-13. Tank Overflow.**

All water storage structures shall be provided with an overflow which is discharged at an elevation between 12 and 24 inches above the ground surface with an appropriate air gap. The discharges shall not cause erosion.

(1) Diameter.

All overflow pipes shall be of sufficient capacity to permit waste of water in excess of the filling rate.

(2) Slope.

All overflow pipes shall be sloped for complete drainage,

(3) Screen.

All overflow pipes shall be screened with No. 4 mesh non-corrodible screen installed at a location least susceptible to

damage by vandalism,

(4) Visible Discharge.

All overflow pipes shall be located so that any discharge is visible,

(5) Cross Connections.

All overflow pipes shall not be connected to, or discharge into, any sanitary sewer system.

(6) Paint.

If an overflow pipe within a reservoir is painted or otherwise coated, such coating shall comply with ANSI/NSF Standard 61.

**R309-545-14. Access Openings.**

Drinking water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance.

(1) Height.

There shall be at least one opening above the water line which shall be framed at least four inches above the surface of the roof at the opening; or if on a buried structure, shall be elevated at least 18 inches above any earthen cover over the structure. The frame shall be securely fastened and sealed to the tank roof so as to prevent any liquid contaminant entering the tank. Concrete drinking water storage structures shall have raised curbs around access openings, formed and poured continuous with the pouring of the roof and sloped to direct water away from the frame.

(2) Shoebox Lid.

The frame of any access opening shall be provided with a close fitting solid shoebox type cover which extends down around the frame at least two inches and is furnished with a gasket(s) between the lid and frame,

(3) Locking Device.

The lid to any access opening shall have a locking device.

**R309-545-15. Venting.**

Drinking water storage structures shall be vented. Overflows shall not be considered as vents. Vents provided on drinking water storage reservoirs shall:

(1) Inverted Vent.

Be downturned a minimum of two inches below any opening or shielded to prevent the entrance of surface water and rainwater.

(2) Open Discharge.

On buried structures, have the discharge a minimum of 24 inches above the earthen covering.

(3) Blockage.

Be located and sized so as to avoid blockage during winter conditions.

(4) Pests.

Exclude birds and animals.

(5) Dust.

Exclude insects and dust, as much as this function can be made compatible with effective venting.

(6) Screen.

Be fitted with No. 14 mesh or finer non-corrodible screen.

(7) Screen Protector.

Be fitted with additional heavy gage screen or substantial covering which will protect the No. 14 mesh screen against vandalism and, further, discourage purposeful attempts to contaminate the reservoir.

**R309-545-16. Freezing Prevention.**

All drinking water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which may interfere with proper functioning.

**R309-545-17. Level Controls.**

Adequate level control devices shall be provided to maintain water levels in storage structures.

**R309-545-18. Security.**

Locks on access manholes, and other necessary precautions shall be provided to prevent unauthorized entrance, vandalism, or sabotage.

**R309-545-19. Safety.**

(1) Utah OSHA.

The safety of employees shall be considered in the design of the storage structure. Ladders, ladder guards, platform railings, and safely located entrance hatches shall be provided where applicable. As a minimum, such matters shall conform to pertinent laws and regulations of the Utah Occupational Safety and Health Administration.

(2) Ladders.

Generally, ladders having an unbroken length in excess of 20 feet shall be provided with appropriate safety devices. This requirement shall apply both to interior and exterior reservoir ladders.

(3) Requirements for Elevated Tanks.

Elevated tanks shall have railings or handholds provided for transfer from the access tube to the water compartment.

**R309-545-20. Disinfection.**

Drinking water storage structures shall be disinfected before being put into service for the first time, and after being entered for cleaning, repair, or painting. The reservoir shall be cleaned of all refuse and shall then be washed with potable water prior to adding the disinfectant. AWWA Standard C652-02 shall be followed for reservoir disinfection, with the exception there shall be no delivery of waters used in the disinfection process to the distribution system, unless specifically authorized, in writing, by the Executive Secretary.

Upon completing any of the three methods for storage tank chlorination, as outlined in AWWA C652-02, the water system must properly dispose of residual super-chlorinated waters in the outlet pipes. Other super-chlorinated waters, which are not to be ultimately diluted and delivered into the distribution system, shall also be properly disposed.

Chlorinated water discharged from the storage tank shall be disposed of in an acceptable manner and in conformance with the rules of the Utah Water Quality Board (see R317 of the Utah Administrative Code).

**R309-545-21. Incorporation by Reference.**

The following list of Standards shall be considered as incorporated by reference in this specific rule. The most recent published copy of the referenced standard will apply in each case.

(1) AWWA Standards.

(a) C652-02, Disinfection of Water Storage Reservoirs.

(b) D100-05, Welded Steel Tanks for Water Storage.

(c) D101-53(R86), Inspecting and Repairing Steel Water Tanks, Standpipes, Reservoirs, and Elevated Tanks for Water Storage.

(d) D102-03, Coating Steel Water-Storage Tanks.

(e) D103-97, Factory-Coated Bolted Steel Tanks for Water Storage.

(f) D104-01, Automatically Controlled, Impressed-Current Cathodic Protection for the Interior of Steel Water Tanks.

(g) D110-04, Wire-Wound Circular Prestressed-Concrete Water Tanks (including addendum D110a-96).

(h) D115-95, Circular Prestressed Concrete Water Tanks With Circumferential Tendons.

(i) D120-02, Thermosetting Fiberglass-Reinforced Plastic Tanks.

(j) D130-02, Flexible-Membrane-Lining and Floating-

Cover Materials for Potable-Water Storage.

(2) NSF International Standards.

(a) NSF 60, Drinking Water Treatment Chemicals - Health Effects.

(b) NSF 61, Drinking Water System Components - Health Effects.

(3) Utah OSHA.

Applicable standards of the Utah Occupational Safety and Health Administration are hereby incorporated by reference.

**R309-545-22. Operation and Maintenance of Storage Tanks.**

(1) Inspection and Cleaning.

Tanks which are entered for inspection and cleaning shall be disinfected in accordance with AWWA Standard C652-02 prior to being returned to service. When diver(s) enter storage tanks that have not been drained for inspection purposes, they shall comply with section five of the above standard unless the tank is constructed of steel, in which case they shall comply additionally with AWWA Standard D101-53(R86).

(2) Recoating or Repairing.

Any substance used to recoat or repair the interior of drinking water storage tank shall be certified to conform with ANSI/NSF Standard 61. If the tank is not drained for recoating or repairing, any substance or material used to repair interior coatings or cracks shall be suitable for underwater application, as indicated by the manufacturer, as well as comply with both ANSI/NSF Standards 60 and 61.

(3) Seasonal Use.

Water storage tanks which are operated seasonally shall be flushed and disinfected in accordance with AWWA Standard C652-02 prior to each season's use. Certification of proper disinfection, as evidenced by at least one satisfactory bacteriologic sample, shall be obtained by the system management and kept on file for inspection by personnel of the Division. During the non-use period, care shall be taken to see that openings to the water storage tank (those which are normally closed and sealed during normal use) are closed and secured.

**KEY: drinking water, storage tanks, access, overflow and drains**

**April 27, 2009**

**19-4-104**

**Notice of Continuation March 22, 2010**

**R309. Environmental Quality, Drinking Water.****R309-550. Facility Design and Operation: Transmission and Distribution Pipelines.****R309-550-1. Purpose.**

The purpose of this rule is to provide specific requirements for the design and installation of transmission and distribution pipelines which are utilized to deliver culinary drinking water to facilities of public drinking water systems or to consumers. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-550-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-550-3. Definitions.**

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

**R309-550-4. General.**

Transmission and distribution pipelines shall be designed, constructed and operated to convey adequate quantities of water at ample pressure, while maintaining water quality.

**R309-550-5. Water Main Design.****(1) Distribution System Pressure.**

The distribution system shall be designed to maintain minimum pressures as required in R309-105-9 (at ground level) at all points of connection, under all conditions of flow, but especially during peak day flow conditions, including fire flows.

**(2) Assumed Flow Rates.**

Flow rates to be assumed when designing or analyzing distribution systems shall be as given in R309-510 of these rules.

**(3) Computerized Network Analysis.**

(a) All water mains shall be sized after a hydraulic analysis based on flow demands and pressure requirements. If the calculations needed to conduct this hydraulic analysis are complex, a computerized network analysis shall be performed to verify that the distribution system will be capable of meeting the requirements of this rule.

(b) Where improvements will upgrade more than 50% of an existing distribution system, or where a new distribution system is proposed, a hydraulic analysis of the entire system shall be prepared and submitted for review prior to plan approval.

(c) In the analysis and design of water distribution systems, the following Hazen-William coefficients shall be used: PVC pipe = 140; Ductile Iron Pipe = 120; Cement-Mortar Lined Ductile Iron Pipe = 130 to 140.

**(4) Minimum Water Main Size.**

For water mains not connected to fire hydrants, the minimum line size shall be 4-inch diameter. Minimum water main size serving a fire hydrant lateral shall be 8-inch diameter unless a hydraulic analysis indicates that required flow and pressures can be maintained by smaller lines.

**(5) Fire Protection.**

If a public water system is required to provide water for fire suppression by the local fire authority, or if the system has installed fire hydrants on existing distribution mains for that

purpose:

(a) The design of the distribution system shall be consistent with Appendix B of the 2003 International Fire Code. As specified in this code, minimum fire-flow requirements are:

(i) 1000 gpm for one- and two-family dwellings with an area of less than 3600 square feet.

(ii) 1500 gpm or greater for all other buildings.

(b) The location of fire hydrants shall be consistent with Appendix C of the 2003 International Fire Code. As specified in this code, average spacing between hydrants must be no greater than 500 ft.

(c) An exception to the fire protection requirements of (a) and (b) may be granted if a suitable statement is received from the local fire protection authority.

(d) Water mains not designed to carry fire flows shall not have fire hydrants connected to them.

(e) The design engineer shall verify that the pipe network design permits fire-flows to be met at representative locations while minimum pressures as required in R309-105-9 are maintained at all times and at all points in the distribution system.

(f) As a minimum, the flows to be assumed during a fire-flow analysis shall be the "peak day demand" plus the fire flow requirement.

**(6) Geologic Considerations.**

The character of the soil through which water mains are to be laid shall be considered. This information shall accompany any submittal for a pipeline project.

**(7) Dead Ends.**

(a) In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practical.

(b) Where dead-end mains occur, they shall be provided with a fire hydrant if flow and pressure are sufficient, or with an approved flushing hydrant or blow-off for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least 2.5 fps in the water main being flushed. No flushing device shall be directly connected to any sewer.

**(8) Valves.**

Sufficient valves shall be provided on water mains so that inconvenience and sanitary hazards will be minimized during repairs. Valves shall be located at not more than 500 foot intervals in commercial districts and at not more than one block or 800 foot intervals in other districts. Where systems serve widely scattered customers and where future development is not expected, the valve spacing shall not exceed one mile.

**(9) Corrosive Soils.**

The design engineer shall consider the materials to be used when corrosive soils or waters will be encountered.

**(10) Special Precautions in Areas of Groundwater Contamination by Organic Compounds.**

Where distribution systems are installed in areas of groundwater contaminated by organic compounds:

(a) pipe and joint materials which are not subject to permeation of the organic compounds shall be used.

(b) non-permeable materials shall be used for all portions of the system including water main, service connections and hydrant leads.

**(11) Separation of Water Mains from Other Sources of Contamination.**

Design engineers shall exercise caution when locating water mains at or near certain sites such as sewage treatment plants or industrial complexes. Individual septic tanks shall be located and avoided. The engineer shall contact the Division to establish specific design requirements for locating water mains near any source of contamination.

**R309-550-6. Component Materials and Design.****(1) NSF Standard for Health Effects.**

All materials which may contact drinking water, including pipes, gaskets, lubricants and O-Rings, shall be ANSI-certified as meeting the requirements of NSF Standard 61, Drinking Water System Components - Health Effects. To permit field-verification of this certification, all such components shall be appropriately stamped with the NSF logo.

(2) Restrictions on Asbestos and Lead.

(a) The use of asbestos cement pipe shall not be allowed.

(b) Pipes and pipe fittings containing more than 8% lead shall not be used. Lead-tip gaskets shall not be used. Repairs to lead-joint pipe shall be made using alternative methods.

(3) AWWA Standards for Mechanical Properties.

Pipe, joints, fittings, valves and fire hydrants shall conform to NSF Standard 61 or Standard 14, and applicable sections of ANSI/AWWA Standards C104-A21.4-03 through C550-05 and C900-07 through C950-07.

(4) Used Materials.

Only materials which have been used previously for conveying potable water may be reused. Used materials shall meet the above standards, be thoroughly cleaned, and be restored practically to their original condition.

(5) Fire Hydrant Design.

Hydrant drains shall not be connected to or located within 10 feet of sanitary sewers or storm drains.

(6) Air Relief Valves.

At high points in water mains where air can accumulate, provisions shall be made to remove air by means of hydrants or air relief valves. Automatic air relief valves shall not be used in situations where flooding may occur.

(a) Air Relief Valve Vent Piping.

The open end of an air relief vent pipe from automatic valves shall, where possible as determined by public water system management, be extended to at least one foot above grade and provided with a screened (#14 mesh, non-corrodible) downward elbow. Alternately, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding and provided with a drain-to-daylight (See (b) below). Blow-offs or air relief valves shall not be connected directly to any sewer.

(b) Chamber Drainage.

Chambers, pits or manholes containing valves, blow-offs, meters, other such appurtenances to a distribution system, shall not be connected directly to any storm drain or sanitary sewer. They shall be provided with a drain to daylight. Where this is not possible, underground gravel filled absorption pits may be used if the site is not subject to flooding and conditions will assure adequate drainage. Where a chamber contains an air relief valve, and it is not possible to provide a drain-to-daylight, the vent pipe from the valve shall be extended to at least one foot above grade (See (a) above). Only when it is both impossible to extend the vent pipe above grade, and impossible to provide a drain-to-daylight may a gravel filled sump be utilized to provide chamber drainage (assuming local ground conditions permit adequate drainage without ground water intrusion).

**R309-550-7. Separation of Water Mains and Transmission Lines from Sewers and Other Pollution Sources.**

(1) Basic Separation Standards.

The horizontal distance between pressure water mains and sanitary sewer lines shall be at least ten feet. Where a water main and a sewer line must cross, the water main shall be at least 18 inches above the sewer line. Separation distances shall be measured edge-to-edge (i.e. from the nearest edges of the facilities). Water mains and sewer lines shall not be installed in the same trench.

(2) Exceptions to Basic Separation Standards.

Local conditions, such as available space, limited slope, existing structures, etc., may create a situation where there is no

alternative but to install water mains or sewer lines at a distance less than that required by Subsection (1), above. Exceptions to the rule may be provided by the Executive Secretary if it can be shown that the granting of such an exception will not jeopardize the public health.

(3) Special Provisions.

The following special provisions apply to all situations:

(a) The basic separation standards are applicable under normal conditions for sewage collection lines and water distribution mains. More stringent requirements may be necessary if conditions such as high groundwater exist.

(b) Sewer lines shall not be installed within 25 feet horizontally of a low head (5 psi or less pressure) water main.

(c) Sewer lines shall not be installed within 50 feet horizontally of any transmission line segment which may become unpressurized.

(d) New water mains and sewers shall be pressure tested where the conduits are located ten feet apart or less.

(e) In the installation of water mains or sewer lines, measures shall be taken to prevent or minimize disturbances of the existing line.

(f) Special consideration shall be given to the selection of pipe materials if corrosive conditions are likely to exist. These conditions may be due to soil type and/or the nature of the fluid conveyed in the conduit, such as a septic sewage which produces corrosive hydrogen sulfide.

(g) Sewer Force Mains

(i) Sewer force mains shall not be installed within ten feet (horizontally) of a water main.

(ii) When a sewer force main must cross a water line, the crossing shall be as close as practical to the perpendicular. The sewer force main shall be at least 18 inches below the water line.

(iii) When a new sewer force main crosses under an existing water main, all portions of the sewer force main within ten feet (horizontally) of the water main shall be enclosed in a continuous sleeve.

(iv) When a new water main crosses over an existing sewer force main, the water main shall be constructed of pipe materials with a minimum rated working pressure of 200 psi or equivalent pressure rating.

(4) Water Service Laterals Crossing Sewer Mains and Laterals.

Water service laterals shall conform to all requirements given herein for the separation of water and sewer lines.

**R309-550-8. Installation of Water Mains.**

(1) Standards.

(a) The specifications shall incorporate the provisions of the manufacturer's recommended installation procedures or the following standards:

(i) AWWA Standard C600-05, Installation of Ductile Iron Water Mains and Their Appurtenances

(ii) ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and PVC Pipe

(b) The provisions of the following publication shall be followed for PVC pipe design and installation:

PVC Pipe - Design and Installation, AWWA Manual M23, 2002, published by the American Water Works Association

(2) Bedding.

A continuous and uniform bedding shall be provided in the trench for all buried pipe. Stones larger than the backfill materials described below shall be removed for a depth of at least six inches below the bottom of the pipe.

(3) Backfill.

Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. The material and backfill zones shall be as

specified by the standards referenced in Subsection (1), above. As a minimum:

(a) For plastic pipe, backfill material with a maximum particle size of 3/4 inch shall be used to surround the pipe.

(b) For ductile iron pipe, backfill material shall contain no stones larger than 2 inches.

(4) Dropping Pipe into Trench.

Under no circumstances shall the pipe or accessories be dropped into the trench.

(5) Burial Cover.

All water mains shall be covered with sufficient earth or other insulation to prevent freezing unless they are part of a non-community system that can be shut-down and drained during winter months when temperatures are below freezing.

(6) Thrust Blocking.

All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement.

(7) Pressure and Leakage Testing.

All types of installed pipe shall be pressure tested and leakage tested in accordance with AWWA Standard C600-99.

(8) Surface Water Crossings.

(a) Above Water Crossings

The pipe shall be adequately supported and anchored, protected from damage and freezing, and accessible for repair or replacement.

(b) Underwater Crossings

A minimum cover of two feet or greater, as local conditions may dictate, shall be provided over the pipe. When crossing water courses which are greater than 15 feet in width, the following shall be provided:

(i) The pipe shall be of special construction, having restrained joints for any joints within the surface water course and flexible restrained joints at both edges of the water course.

(ii) Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible, and not subject to flooding; and the valve nearest to the supply source shall be in a manhole.

(iii) Permanent taps shall be made on each side of the valve within the manhole to allow insertion of testing equipment to determine leakage and for sampling purposes.

(9) Sealing Pipe Ends During Construction.

The open ends of all pipeline under construction shall be covered and effectively sealed at the end of the day's work.

(10) Disinfecting Water Distribution Systems.

All new water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-05. The specifications shall include detailed procedures for the adequate flushing, disinfection and microbiological testing of all water mains. On all new and extensive distribution system construction, evidence of satisfactory disinfection shall be provided to the Division. Samples for coliform analyses shall be collected after disinfection is complete and the system is refilled with potable water. A standard heterotrophic plate count is advisable. The use of water for culinary purposes shall not commence until the bacteriological tests indicate the water to be free from contamination.

#### **R309-550-9. Cross Connections and Interconnections.**

(1) Physical Cross Connections.

There shall be no physical cross connections between the distribution system and pipe, pumps, hydrants, or tanks which are supplied from, or which may be supplied or contaminated from, any source except as approved by the Executive Secretary.

(2) Recycled Water.

Neither steam condensate nor cooling water from engine jackets or other heat exchange devices shall be returned to the potable water supply.

(3) System Interconnects.

The approval of the Executive Secretary shall be obtained for interconnections between different potable water supply systems.

#### **R309-550-10. Water Hauling.**

Water hauling is not an acceptable permanent method for culinary water distribution in community water systems. Proposals for water hauling shall be submitted to and approved by the Executive Secretary.

(1) Exceptions.

The Executive Secretary may allow its use for non-community public water supplies if:

(a) consumers could not otherwise be supplied with good quality drinking water, or

(b) the nature of the development, or ground conditions, are such that the placement of a pipe distribution system is not justified.

(2) Emergencies.

Hauling may also be necessary as a temporary means of providing culinary water in an emergency.

#### **R309-550-11. Service Connections and Plumbing.**

(1) Service Taps.

Service taps shall be made so as to not jeopardize the sanitary quality of the system's water.

(2) Plumbing.

(a) Service lines shall be capped until used.

(b) Water services and plumbing shall conform to the Utah Plumbing Code. Solders and flux containing more than 0.2% lead and pipe and pipe fittings containing more than 8% lead shall not be used.

(3) Individual Home Booster Pumps.

Individual booster pumps shall not be allowed for any individual service from the public water supply mains. Exceptions to the rule may be provided by the Executive Secretary if it can be shown that the granting of such an exception will not jeopardize the public health.

(4) Service Lines.

The portion of the service line under the control of the water supplier is considered to be part of the distribution system and shall comply with all requirements given herein.

(5) Service Meters and Building Service Line.

Connections between the service meter and the home shall be in accordance with the Utah Plumbing Code.

(6) Allowable Connections.

All dwellings or other facilities connected to a public water supply shall be in conformance with the Utah Plumbing Code.

#### **R309-550-12. Transmission Lines.**

(1) Unpressurized Flows.

Transmission lines shall conform to all applicable requirements in this rule. Transmission line design shall minimize unpressurized flows.

(2) Proximity to Concentrated Sources of Pollution.

A water supplier shall not route an unpressurized transmission line any closer than fifty feet to any concentrated source of pollution (i.e. septic tanks and drain fields, garbage dumps, pit privies, sewer lines, feed lots, etc.). Furthermore, unpressurized transmission lines shall not be placed in boggy areas or areas subject to the ponding of water.

(3) Exceptions.

Where the water supplier cannot obtain a fifty foot separation distance from concentrated sources of pollution, it is permitted to use a Class 50 ductile iron pipe with joints acceptable to the Executive Secretary. Reasonable assurance must be provided to assure that contamination will not be able to enter the unpressurized pipeline.

**R309-550-13. Operation and Maintenance.****(1) Disinfection After Line Repair.**

The disinfection procedures of Section 4.7, AWWA Standard C651-05 shall be followed if any water main is cut into or repaired.

**(2) Cross Connections.**

The water supplier shall not allow a connection which may jeopardize water quality. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of the Utah Plumbing Code shall be met with respect to cross connection control and backflow prevention.

Suppliers shall maintain an inventory of each pressure vacuum breaker assembly, spill-resistant vacuum breaker assembly, double check valve assembly, reduced pressure principle backflow prevention assembly, and high hazard air gap used by their customers, and a service/inspection record for each such assembly.

Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work. This 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.

Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

**(3) NSF Standards.**

All pipe and fittings used in routine operation and maintenance shall be ANSI-certified as meeting NSF Standard 61 or Standard 14.

**(4) Seasonal Operation.**

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-05 for pipelines and AWWA Standard C652-02 for storage facilities prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

**KEY: drinking water, transmission and distribution pipelines, connections, water hauling**

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**R309. Environmental Quality, Drinking Water.**  
**R309-600. Source Protection: Drinking Water Source Protection For Ground-Water Sources.**

**R309-600-1. Authority.**

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

**R309-600-2. Purpose.**

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

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

**R309-600-3. Implementation.**

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

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

TABLE 1

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

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

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

**R309-600-4. Exceptions.**

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

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

**R309-600-5. Designated Person.**

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

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

**R309-600-6. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(t) "PWS" means public water system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **R309-600-7. DWSP Plans.**

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

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

(a) DWSP Delineation Report - A DWSP Delineation

Report in accordance with R309-600-9(6) is the first section of a DWSP Plan.

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

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

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

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

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

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

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

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

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

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

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

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

(f) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to DDW within 180 days after the reconstruction or redevelopment of any ground-water source of drinking water which addresses changes in source construction,

source development, hydrogeology, delineation, potential contamination sources, and proposed land management strategies.

#### **R309-600-8. DWSP Plan Review.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Criteria Thresholds for Ground-water Sources for Drinking Water:

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

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

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

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

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

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

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

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

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

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

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

(ii) Well Construction Data - If the source is a well, the

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

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

(iv) Aquifer Data for New Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test and provide the data as described in R309-515-6(10)(b). Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

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

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

The constant-rate test shall:

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

(B) Provide data as described in R309-515-6(10)(b)(v) through (vii).

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

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

for the aquifer setting. For wells, the hydrogeologic method or ground-water model must include the effects of drawdown (increased hydraulic gradient near the well) and interference from other wells.

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

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

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

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

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

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

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

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

(c) evidence that the well has been grouted or otherwise sealed from the ground surface to a depth of at least 100 feet and for a thickness of at least 30 feet through the protective clay layer in accordance with R309-600-6(1)(x) and R309-515-6(6)(i).

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

(1) Prioritized Inventory of Potential Contamination Sources - Each PWS shall list all potential contamination sources within each DWSP zone or management area in priority order and state the basis for this order. This priority ranking shall be according to relative risk to the drinking water source. The name and address of each commercial and industrial potential contamination source is required. Additional information should include the name and phone number of a

contact person and a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, three, four or in a management area and plot it on the map required in R309-600-9(6)(a)(viii) or R309-600-9(6)(b)(i).

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

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

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

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

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

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

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

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

is subject to review by the Executive Secretary; as a result, a PWS's DWSP Plan may be disapproved if the Executive Secretary does not concur with its assessment(s).

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

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

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

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

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

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

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

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

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

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

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

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

(4) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to ground water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not

used, PWSs must establish a plan to contact potential contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

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

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-515-6(5)(a) or R309-515-7(4) must be submitted to DDW. The Executive Secretary will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-515. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

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

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-600-9(6), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells. The Delineation Report for Estimated DWSP Zones shall be stamped and signed by a professional geologist or professional engineer unless the Optional Two-Mile Radius Delineation Procedure is used for a new spring.

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

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

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

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with R309-600-9(6)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which

exclusively identifies the land owners in zones one and two or the management area, the parcel(s) of land which they own, and the zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

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

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

(a) Zone One - If the conditions specified in R309-600-13(3)(a)(i and ii) below are met, all sewer lines within zone one shall be constructed in accordance with R309-515-6(4) and must be at least 10 feet from the wellhead.

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

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

(b) Zones One and Two - If the conditions identified in R309-600-13(3)(a)(i and ii) above cannot be met, any sewer lines within zones one and two or a management area shall be constructed in accordance with R309-515-6(4) and must be at least 300 feet from the wellhead or margin of the collection area.

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

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

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

(b) the Outline of Well Approval Process (refer to R309-515-6(5)).

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

#### **R309-600-14. Contingency Plans.**

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

#### **R309-600-15. Public Notification.**

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

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

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

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

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

#### **R309-600-16. Monitoring Reduction Waivers.**

(1) Three types of monitoring waivers are available to PWSs. They are: a) reliably and consistently, b) use, and c) susceptibility. The criteria for establishing a reliably and consistently waiver is set forth in R309-205. The criteria for use and susceptibility waivers follow.

(2) If a source's DWSP plan is due according to the schedule in R309-600-3, and is not submitted to DDW, its use and susceptibility waivers for the VOC and pesticide parameter groups (refer to R309-205-6(1)(e) and (f); and (R309-205-6(2)(h) and (i)) will expire unless an exception (refer to R309-600-4) for a new due date has been granted. Additionally, current use and susceptibility waivers for the VOC, pesticide and unregulated parameter groups will expire upon review of a DWSP plan, if these waivers are not addressed in the plan. Monitoring reduction waivers must be renewed every six years at the time the PWSs Updated DWSP Plans are due and be addressed therein.

(3) Use Waivers - If the chemicals within the VOC and/or pesticide parameter group(s) (refer to R309-200 table 200-3 and 200-2) have not been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three, the source may be eligible for a use waiver. To qualify for a VOC and/or pesticide use waiver, a PWS must complete the following two steps:

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

(b) submit a dated statement which is signed by the

system's designated person that none of the VOCs and pesticides within these respective parameter groups have been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three.

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

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

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

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

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

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

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

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

(d) contaminant quantities;

(e) affected land area; and/or

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

**KEY: drinking water, environmental health**  
**October 29, 2003**                      **19-4-104(1)(a)(iv)**  
**Notice of Continuation March 17, 2010**

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

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

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

**R309-605-2. Authority.**

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

**R309-605-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) "Surface water" means all water which is open to the atmosphere and subject to surface runoff (see also R309-515-5(1)).

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



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

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

#### **R309-605-4. Implementation.**

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

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

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

#### **R309-605-5. Exceptions.**

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

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

#### **R309-605-6. Designated Person.**

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

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

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

##### (1) DWSP Plans

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

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

(b) Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Surface Sources". This document may be obtained

from the Division. DWSP Plans must include the following eight sections:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) DWSP Plan Review.

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

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

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

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

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

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

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

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

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

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

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

(3) Delineation of Protection Zones

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

(b) Alternatively, the PWS may provide their own delineation report. Such a submittal must either describe the

zones as defined in R309-605-7(3)(b)(i-iv), or must comply with the requirements and definitions of R309-605-7(3)(c). The delineation report must include a map or maps showing the extent of the zones.

(i) Zone 1:

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

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

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

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

(iv) Zone 4: Zone 4 is defined as the remainder of the area of the watershed (up to the state line, if applicable) contributing to the source that does not fall within the boundaries of zones 1 through 3.

(v) Special case delineations:

(A) Basin Transfer PODs: Where water supplies are received from basin transfers, the water from the extraneous basin will be treated as a separate source, and will be subject to its own DWSP plan, starting from zone 1 at the secondary POD.

(c) If the PWS is able to demonstrate that a different zone configuration is more protective than those defined in R309-605-7(3)(b), that different configuration may be used upon prior review and approval by the Executive Secretary. An explanation of the method used to obtain and establish the dimensions of the zones must be provided. The delineation report must include a map or maps showing the extent of the zones. The entire watershed boundary contributing to a source must be included in the delineation.

(4) Susceptibility Analysis and Determination:

(a) Susceptibility Analysis:

(i) Structural integrity of the intake: The PWS will evaluate the structural integrity of the intake to ensure compliance with the existing source development rule (R309-515-5) on a pass or fail basis. The pass-fail rating will be determined by whether the intake meets minimum rule requirements, and whether the physical condition of the intake is adequate to protect the intake from contamination events. The integrity evaluation includes any portion of the conveyance from the point of diversion to the distribution systems that is open to the atmosphere or is otherwise vulnerable to contamination, including distribution canals, etc.

(ii) Sensitivity of Natural Setting: The PWS will evaluate the sensitivity of the source based on physiographic and/or hydrogeologic factors. Factors influencing sensitivity may

include any natural or man-made feature that increases or decreases the likelihood of contamination. Sensitivity does not address the question of whether contamination is present in the watershed or recharge area.

(iii) Assessment of management of potential contamination sources:

(A) Potential Contamination Source Inventory

(I) Each PWS shall identify and list all potential contamination sources within DWSP zones 1, 2 and 3, as applicable for individual sources. The name and address of each non-residential potential contamination source is required, as well as a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, or three and plot it on the map required in R309-605-7(3)(a and b). The PWS may rely on the inventory provided by the Division for zone 4.

(II) List of Potential Contamination Sources - A List of Potential Contamination Sources may be obtained from the Division. This list may be used by PWSs as an introduction to inventorying potential contamination sources within their DWSP zones. The list is not intended to be all-inclusive.

(III) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones according to R309-605-7(1)(c)(v). This includes adding potential contamination sources which have moved into DWSP zones, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(B) Identification and Assessment of Controls: The PWS will identify and assess the hazards at each potential contamination source, including those in the inventory provided by the Division that are located in zone 4, as "adequately controlled" or "not adequately controlled".

(I) If controls are not identified, the potential contamination source will be considered "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be or are not identified, the potential contamination source must be assessed as "not adequately controlled."

(II) Types of controls: For each hazard deemed to be controlled, one of the following controls shall be identified: regulatory, best management/pollution prevention, or physical controls. Negligible quantities of contaminants are also considered a control. The assessment of controls will not be considered complete unless the controls are completely evaluated and discussed in the DWSP report, using the following criteria:

Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory controls affect the potential for surface water contamination; assess the hazard; and set a date to reassess the hazard. For assistance in identifying regulatory controls, refer to the "Source Protection User's Guide" Appendix D for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from the Division.

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

hazard.

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

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

(III) PWSs may assess controls on Potential Contamination Sources collectively, when the Potential Contamination Sources have similar characteristics, or when the Potential Contamination Sources are clustered geographically. Examples may include, but are not limited to, abandoned mines that are part of the same mining districts, underground storage tanks that are in the same zone, or leaking underground storage tanks in the same city. However, care should be taken to avoid collectively assessing Potential Contamination Sources to the extent that the assessments become meaningless. The Executive Secretary may require an individual assessment for a Potential Contamination Source if the Executive Secretary determines that the collective assessment does not adequately assess controls.

(C) A potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below shall be considered to be adequately controlled unless otherwise determined by the Executive Secretary. The PWS must provide documentation establishing that the Potential Contamination Source is covered by the regulatory program. For all other state regulatory programs, the PWS's assessment is subject to review by the Executive Secretary; as a result, a PWS's DWSP Plan may be disapproved if the Executive Secretary does not concur with its assessment(s).

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

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

(III) The Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and Rule R317-8; at the discretion of the PWS, this may include Confined Animal Feeding Operations/Animal Feeding Operations (CAFO/AFO) assessed under the Utah DWQ CAFO/AFO Strategy.

(IV) The Underground Storage Tank Program established by Section 19-6-403 and Rules R311-200 through R311-208; and

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

(b) Susceptibility determination:

(i) The PWS will assess the drinking water source for its susceptibility relative to each potential contamination source. The determination will be based on the following four factors: 1) the structural integrity of the intake, 2) the sensitivity of the natural setting, 3) whether a Potential Contamination Source is considered controlled or not, and 4) how the first three factors are interrelated. The PWS will provide an explanation of the method or judgement used to weigh the first three factors against each other to determine susceptibility.

(ii) Additionally, each drinking water source will be assessed by the PWS for its overall susceptibility to potential contamination events. This will result in a qualitative assessment of the susceptibility of the drinking water source to contamination. This assessment of overall susceptibility allows the PWS and others to compare the susceptibility of one drinking water source to another.

(iii) Each surface water drinking water source in the state of Utah is initially considered to have a high susceptibility to contamination, due to the intrinsic unprotected nature of surface

water sources. An assumption of high susceptibility will be used by the Executive Secretary unless a PWS or a group of PWSs demonstrates otherwise, per R309-605, and receives concurrence from the Executive Secretary under R309-605-7(2).

(c) **Prioritized Potential Contamination Source Inventory:** The PWS will prepare a prioritized inventory of potential contamination sources based on the susceptibility determinations in R309-605-7(4)(b)(i). The inventory will rank potential contamination sources based on the degree of threat posed to the drinking water source as determined in R309-605-7(4)(b)(i).

(5) **Management Program to Control Each Preexisting Potential Contamination Source.**

(a) PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled."

(b) With the first submittal of the DWSP Plan, PWSs shall include management strategies to reduce the risk of contamination from, at a minimum, each of the three highest priority uncontrolled Potential Contamination Sources in the protection zones for the source. The Executive Secretary may require land management strategies for additional Potential Contamination Sources to assure adequate protection of the source. A management plan may be for one specific Potential Contamination Source (i.e., a sewage lagoon discharging into a stream), or for a group of similar or related Potential Contamination Sources that were assessed jointly under R309-605-7(4)(a)(iii)(B)(III) (i.e., one management plan for septic systems within one residential development would be acceptable, and would count as one of the three Potential Contamination Source management strategies).

PWSs shall plan land management strategies to control preexisting uncontrolled potential contamination sources in accordance with their existing authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-605, designed to control or reduce the risk of potential contamination, and may be regulatory or non-regulatory. Land management strategies must be implemented according to the schedule required in R309-605-7(1)(b)(v).

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

(d) At each six year cycle for revising and resubmitting the DWSP Plan, under the schedule in R309-605-7(1)(c)(v), the PWS shall prioritize their inventory again, and shall propose a management program to control preexisting Potential Contamination Sources for the three highest priority Potential Contamination Sources, which may include uncontrolled Potential Contamination Sources not previously managed. The PWS shall also continue existing management programs, unless justification is provided that demonstrates that a Potential Contamination Source that was previously managed is now considered controlled.

(6) **Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.**

(a) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones consistent with the provisions of R309-605 and to the extent allowed under its authority and jurisdiction. Land management strategies must be designed to control or reduce the risk of potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-605-7(1)(b)(v).

(b) Protection areas may extend into neighboring cities,

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

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

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

(7) **Public Notification:**

Within their DWSP report, each PWS shall specify the method and schedule for notifying their customers and consumers that an assessment of their surface water source has been completed and what the results of that assessment are. Each PWS shall provide the proposed public notification material as an appendix to the DWSP report. The public notification material shall include a discussion of the general geologic and physical setting of the source, the sensitivity of the setting, general types of potential contamination sources in the area, how susceptible the drinking water source is to potential contamination and a map showing the location of the drinking water source and generalized areas of potential concern (it is not mandatory to show the location of the intake itself). The public notification material will be in plain English. The purpose of this public notification is to advise the public regarding how susceptible their drinking water source is to potential contamination sources. Examples of means of notifying the public, and examples of acceptable public notification materials, are available from the Division. The public notification materials must be approved by the Executive Secretary prior to distribution.

#### **R309-605-8. DWSP for Ground-Water Sources Under the Direct Influence of Surface Water Sources.**

(1) DWSP for ground-water sources under the direct influence of surface water sources will be accomplished through delineation of both the ground-water and surface water contribution areas. The requirements of R309-600 will apply to the ground-water portion, and the requirements of R309-605 will apply to the surface water portion, except that the schedule for such DWSP plans under this section will be based on the schedule shown in R309-605-4(1).

#### **R309-605-9. New Surface Water Sources of Drinking Water.**

(1) Prior to constructing a new surface water source of drinking water, each PWS shall develop a preliminary evaluation report (PER) which demonstrates that the source location has been chosen such that the number of uncontrolled sources in zones 1 and 2 is minimized. If the source water is not currently classified as Class 1C under UAC R317-2, the PWS must request such a classification from the Water Quality Board for zones 1 and 2. The PWS must also request that the source water be categorized as High Quality Waters - Category 1 or 2

under UAC R317-2-3 (Antidegradation Policy), if applicable. In addition, engineering information in accordance with R309-515-4 and R309-515-5 (general source development and surface water source development requirements) must be submitted to the Executive Secretary concurrent with the PER. A complete DWSP plan is required, one year after approval of the PER and after construction of the source intake, following the requirements of R309-605-7.

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

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-605-7(3).

(b) Susceptibility Analysis and determination (including inventory)- The same requirements apply as in R309-605-7(4).

(c) Land Use Map - A land use map which includes all land within zones one and two and the primary use of the land (residential, commercial, industrial, recreational, crops, animal husbandry, etc). Existing maps or GIS data may be used to satisfy this requirement.

(d) Documentation of Division of Water Quality classification of source water - with reference to R317-2, provide documentation of the classification of the source waters by the Water Quality Board/Division of Water Quality (see also R309-605-9(1)), and of any associated petition for a change in classification.

(3) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-605-4 for any new surface water source of drinking water within one year after the date of the Executive Secretary's concurrence letter with the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new characteristics of the source.

#### **R309-605-10. Contingency Plans.**

PWSs shall submit a Contingency Plan which includes all sources of drinking water (groundwater and surface water) for their entire water system to the Executive Secretary concurrently with the submission of their first DWSP Plan. The Contingency Plan shall address emergency response, rationing, water supply decontamination, and development of alternative sources.

#### **KEY: drinking water, environmental health**

**August 27, 2001**

**19-4-104(1)(a)(iv)**

**Notice of Continuation March 17, 2010**

**R309. Environmental Quality, Drinking Water.****R309-700. Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program.****R309-700-1. Purpose.**

This rule establishes criteria for financial assistance to public drinking water systems in accordance with Title 73, Chapter 10c, Utah Code Annotated using funds made available by the Utah legislature from time to time for this purpose.

**R309-700-2. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue loans to political subdivisions to finance all or part of drinking water project costs and to enter into "credit enhancement agreements", "interest buy-down agreements", and "Hardship Grants" is provided in Title 73, Chapter 10c, Utah Code.

**R309-700-3. Definitions and Eligibility.**

Title 73, Chapter 10c, subsection 4(2)(a) limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities; and also includes studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary project, easement or right of way, engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; costs for studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and

preparation of plans and specifications.

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

"Eligible Water System" means any community drinking water system owned by a political subdivision of the State.

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

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health and / or safety of the public / water users.

**R309-700-4. Application and Project Initiation Procedures.**

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) The applicant is required to submit a completed application form, an engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan that includes an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project, and documents necessary to perform a financial capability assessment (when requested), and capacity assessment (when determined to be beneficial for evaluating project feasibility). Comments from the local health department and/or district engineer may accompany the application. Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) Division staff will evaluate the application and supporting documentation, calculate proposed terms of financial assistance, prepare a report for review by the Board, and present said report to the Board for its consideration.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approve the project schedule (see R309-700-13). The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant (see R309-700-5). If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Chapter 10c, Title 73 Utah Code, which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant;

provided, that for purposes of this paragraph and for purposes of Section 73-10c-4(2), Utah Code, the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R309-700-10(2) or in connection with any other interest buy-down arrangement.

(5) Planning Grant - The applicant must submit an application provided by the Division and attach a scope of work, project schedule, cost estimates, and a draft contract for planning services.

(6) Planning Loan - The applicant requesting a Planning Loan must complete an application for a Planning Loan, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations and a schedule of work.

(7) Design Grant or Loan - The applicant requesting a Design Grant or Loan must have completed an engineering plan meeting program requirements.

(8) The applicant must demonstrate public support for the project. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water.

(9) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant (see R309-700-13(3)), must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to the Utah Code, Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(10) Hardship Grant - The Board or its designee executes a grant agreement setting forth the terms and conditions of the grant.

(11) As authorized in 19-4-106(3) of the Utah Code, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction, as specified in rule R309-500-4 General. Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary.

(12) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement as described in R309-700-10(2) to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in R309-700-10(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(13) If a revenue bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for

review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(14) A plan of operation for the completed project, including staffing with an appropriately certified (in accordance with R309-300) operator, staff training, and procedures to assure efficient start-up, operation and maintenance of the project, must be submitted by the applicant and approved by the Board, its Executive Secretary or other designee.

(15) The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(16) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

(17) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board executes the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (See R309-700-9 and -10).

(18) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds and notifies the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by Section 73-10c-6(3)(d), Utah Code. If an interest buy-down agreement is utilized, the bonds shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(19) The applicant opens bids for the project.

(20) LOAN ONLY - The Board approves purchase of the bonds and executes the loan contract (see R309-700-4(24)).

(21) LOAN ONLY - The loan closing is conducted.

(22) A preconstruction conference shall be held.

(23) The applicant issues a written notice to proceed to the contractor.

(24) The applicant must have adopted a Water Conservation Plan prior to executing the loan agreement.

#### **R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.**

(1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:

(a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;

(b) The ability of the applicant to repay the loan or other project obligations;

(c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and

(d) Whether the drinking water project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential hazards;

(iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;

(v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.

(vi) is needed as a result of an Emergency.

(e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;

(f) Consistency with other funding source commitments which may have been obtained for the project;

(g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT	POINTS
<b>1. PUBLIC HEALTH AND WELFARE (SELECT ONE)</b>	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
<b>2. WATER QUALITY RECORD (SELECT ONE)</b>	
A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
<b>3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)</b>	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
<b>4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)</b>	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0
<b>5. ABILITY TO MEET FUTURE DEMANDS (Select One)</b>	
A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3
<b>6. OVERALL URGENCY (Select One)</b>	

A. System is generally out of water. There is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
<b>TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT</b>	<b>100</b>

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Table 2 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent Revenue Bond Buyer Index (RBBBI) as published by the Bond Buyer's Guide. The interest rate so calculated will be assigned to the financial assistance. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

For hardship grant consideration, exclusive of planning and design grants or loans described in Sections R309-700-6, 7 and 8, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records or the local median adjusted gross income (MAGI) is less than or equal to eighty-percent (80.0%) of the State's median adjusted gross income. When considering funding for planning and design grants and loans described in Sections R309-700-6, 7 and 8, the Board will consider whether or not the applicant's local MAGI meets the above criteria for hardship grant funding. If, in the judgment of the Board, the State Tax Commission data is insufficient, the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filings for a given zip code or city). The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS	POINTS
<b>1. COST EFFECTIVENESS RATIO (SELECT ONE)</b>	
A. Project cost \$0 to \$500 per benefiting connection	13
B. \$501 to \$1,500	11
C. \$1,501 to \$2,000	9
D. \$2,001 to \$3,000	6
E. \$3,001 to \$5,000	3
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
<b>2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)</b>	
A. Less than 70% of State Median AGI	16
B. 71 to 80% of State Median AGI	14
C. 81 to 95% of State Median AGI	12
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
<b>3. APPLICANT'S COMMITMENT TO PROJECT</b>	



PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)

A. Greater than 25% of project funds	15
B. 15 to 25% of project funds	12
C. 10 to 15% of project funds	9
D. 5 to 9% of project funds	6
E. 2 to 4% of project funds	3
F. Less than 2% of project funds	0

4 and 5. ABILITY TO REPAY LOAN:

4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)

A. Greater than 2.50% of local median AGI	15
B. 2.01 to 2.50% of local median AGI	11
C. 1.51 to 2.00% of local median AGI	7
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0

5. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)

A. Greater than 12% of fair market value	15
B. 8.1 to 12% of fair market value	12
C. 4.1 to 8.0% of fair market value	9
D. 2.1 to 4.0% of fair market value	6
E. 1.0 to 2.0% of fair market value	3
F. Less than 1% of fair market value	0

6. SPECIAL INCENTIVES Applicant:

A. has a replacement fund receiving annual deposits of 5% of drinking water budget, and has already accumulated a minimum of 25% of said annual DW budget in this reserve fund.	5
B. is creating or enhancing a regionalization Plan	16
C. has a rate structure encouraging conservation	5

TOTAL POSSIBLE POINTS FOR FINANCIAL NEED 100

- (b) Optimizing return on the security account while still allowing the project to proceed.
- (c) Local political and economic conditions.
- (d) Cost effectiveness evaluation of financing alternatives.
- (e) Availability of funds in the security account.
- (f) Environmental need.
- (g) Other criteria the Board may deem appropriate.

**R309-700-6. Planning Grant.**

(1) A Planning Grant can only be made to a political subdivision with a population less than 10,000 people demonstrating an urgent need to evaluate its drinking water system's technical, financial and managerial capacity, and lacks the financial means to readily accomplish such an evaluation.

(2) Qualifying for a Planning Grant will be based on the criteria listed in R309-700-5(2)(a).

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Grant will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and the Board is executed or the Board may choose to provide the funds in incremental disbursements as the applicant incurs expenses on the project.

(4) Failure on the part of the recipient of a Planning Grant to implement the findings of the plan may prejudice any future applications for drinking water project funding.

(5) The recipient of a Planning Grant must first receive written approval for any cost increases or changes to the scope of work.

(6) The Planning Grant recipient must provide a copy of the planning project results to the Division. The planning effort shall conform to rules R309.

**R309-700-7. Planning Loan.**

(1) A Planning Loan can only be made to a political subdivision which demonstrates a financial hardship preventing the completion of project planning.

(2) A Planning Loan is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. The Planning Loan must be repaid to the Board unless the payment obligation is waived by the Board.

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Loan will be deposited with these other funds into a supervised escrow account at the time the loan agreement between the applicant and the Board is executed.

(4) The recipient of a Planning Loan must first receive written approval for any cost increases or changes to the scope of work.

(5) A copy of the document(s) prepared by means of the planning loan shall be submitted to the Division.

**R309-700-8. Design Grant or Loan.**

(1) A Design Grant or Loan can only be made to a political subdivision demonstrating financial hardship preventing completion of project design. For purposes of this Section R309-700-8, project design means engineering plans and specifications, construction contracts, and associated work.

(2) A Design Grant or Loan is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. The Design Grant or Loan must be repaid to the Board unless the payment obligation is waived by the Board as authorized by 73-10c-4(3)(b).

(3) The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Grant or Loan will be deposited with these other funds into a supervised escrow account at the time the grant or loan agreement between the applicant and the Board is executed.

(4) The recipient of a Design Grant or Loan must first receive written approval from the Board before incurring any cost increases or changes to the scope of work.

**R309-700-9. Credit Enhancement Agreements.**

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement subject to the criteria in R309-700-5. To provide security for project obligations the Board may agree to purchase project obligations of applicants or make loans to the applicants to prevent defaults in payments on project obligations. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to applicants to properly enhance the marketability of or security for project obligations.

**R309-700-10. Interest Buy-Down Agreements.**

Interest buy-down agreements may consist of:

(1) A financing agreement between the Board and applicant whereby a specified sum is loaned or granted to the applicant to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

(2) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to

finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(3) Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

#### **R309-700-11. Loans.**

The Board may make loans to finance all or part of a drinking water project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivisions.

#### **R309-700-12. Project Authorization (Reference R309-700-4(4)).**

A project may be "Authorized" for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment, staff feasibility report, and capacity assessment (when determined to be beneficial for evaluating project feasibility). The engineering report shall include a cost effectiveness analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form and other related documents have been reviewed and assessments made, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant).

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

#### **R309-700-13. Financial Evaluations.**

(1) The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

(2) Hardship Grants will be evidenced by a grant agreement.

(3) In providing any form of financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of \$150,000 or less the Board will not require this opinion.

(a) In providing any form of financial assistance in the form of a loan, the Board may purchase either a taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(i) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(ii) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(b) In any other situations, the Board may purchase taxable bonds if it determines, after evaluating all relevant circumstances including the applicant's ability to pay, that the purchase of the taxable bonds is in the best interests of the State and applicant.

(c) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(d) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or interest) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(4) The Board will consider the financial feasibility and cost effectiveness of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board may require that a full capacity assessment be made for a given project. The Board will generally use these reports and assessments to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant (Reference R309-700-9, -10 and -11). If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(5) Normal engineering and investigation costs incurred by the Department of Environmental Quality or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization. If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.

(6) The Board shall determine the date on which the scheduled payments of principal and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system one year of actual use of the project facilities before the first repayment of principal is required.

(7) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(8) **LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY** - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(9) The Board will not forgive the applicant of any payment after the payment is due.

(10) The Board will require a debt service reserve account be established by the applicant at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Annual reports/statements will be required. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(11) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or interest on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(12) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

After the Board has issued a Plan Approval and received the appropriate legal documents and other items required by Rule R309-700, the Board will determine whether the project loan, interest buy-down, credit enhancement, and/or grant meets the conditions of its authorization. If so, the Board will give its final approval. The Executive Secretary or designee may then execute the financial assistance agreement if no aspects of the project have changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down agreement, or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

#### **R309-700-15. Construction.**

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Executive Secretary before execution. The applicant shall notify the Executive Secretary when the project is near completion and request a final inspection. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

**KEY: loans, interest buy-downs, credit enhancements, hardship grants**  
**January 28, 2009**  
**Notice of Continuation March 23, 2010**

**19-4-104**  
**73-10c**

#### **R309-700-14. Committal of Funds and Approval of Agreements.**

**R309. Environmental Quality, Drinking Water.****R309-705. Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan Program.****R309-705-1. Purpose.**

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act (SDWA).

**R309-705-2. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapter 10c, Utah Code.

**R309-705-3. Definitions.**

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities; and also includes studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation costs, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; costs for studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

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

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

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

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

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

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

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule and by the Drinking Water Board.

"Interest" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis.

"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and / or safety of the public / water users.

"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify and / or correct system deficiencies, to help a water system overcome other technical problems. The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.

"SRF Technical Assistance Fund" means a fund (or account) that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.

**R309-705-4. Financial Assistance Methods.****(1) Eligible Activities of the SRF.**

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost as defined by 73-10c-2 of the Utah Code or as allowed by 42 U.S.C.A. 300f et seq. Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.

**(2) Types of Financial Assistance Available for Eligible Water Systems.****(a) Loans.**

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community" as defined in section 3 of this rule. Upon application, the Board will make a case by case determination

whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must meet the definition provided in section 3 of this rule. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest, fees and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation and a notice of "beneficial occupancy" is given to the general contractor. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion or not later than 30 years after project completion if the community served by the water system is determined to be a disadvantaged community. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act (SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project's funding may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(d) Technical Assistance.

The Board may establish a fund (or account) into which the proceeds of an annual fee on loans will be placed. These funds will be used to finance technical assistance for eligible water systems.

This fund will provide low interest loans for technical assistance and any other eligible purpose as defined by Section 1452 of the Safe Drinking Water Act (SDWA) Amendments of 1996 to water systems that are eligible for Federal SRF loans. Repayment of these loans may be waived in whole or in part (grant funds) by the Board whether or not the borrower is disadvantaged.

(i) The Board may establish a fee to be assessed against loans authorized under the Federal SRF Loan Program. The revenue generated by this fee will be placed in a new fund called the "SRF Technical Assistance Fund".

(ii) The amount will be assessed as a percentage of the Principal Balance of the loan on an annual basis, the same as the annual interest and hardship grant assessment are assessed. The borrower will pay the fee annually when paying the principal and interest or hardship grant assessments.

(iii) The Board may set / change the amount of the fee from time to time as they determine meets the needs of the program.

(iv) This fee will be part of the "effective rate" calculated for the loan using Table 2, R309-705-6. This fee may be charged in lieu of or in addition to the interest rate or hardship grant assessment, but in no case will the total of the technical assistance fee, the interest rate, and hardship grant assessment exceed the "effective rate".

(v) The proceeds of the fund will be used as defined above or as modified by the Board in compliance with Section 1452 of the federal SDWA Amendments of 1996.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" (R309-400)

rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

- (i) Dams, or rehabilitation of dams;
- (ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;
- (iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;
- (iv) Laboratory fees for monitoring;
- (v) Operation and maintenance costs;
- (vi) Projects needed mainly for fire protection.

### **R309-705-5. Application and Project Initiation Procedures.**

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report (facility plan) listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project and financial capability assessment and a history of the applicant's compliance with the SDWA are submitted to the Board. Comments from other interested parties such as an association of governments, the local health and planning departments, and the Department of Environmental Quality (DEQ) District Engineers will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering and financial feasibility report and a capacity development analysis are prepared by Division staff for presentation to and consideration by the Board. A Capacity Assessment will be made by Division staff (See rule R309-352) for "equivalency" projects, essentially, those funded by the annual federal Capitalization Grant as defined by federal regulations. A capacity assessment may be prepared for a "non-equivalency project when it is determined to be beneficial for evaluating project feasibility.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approve the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the

notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the "effective rate", the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of the public hearing shall be forwarded to the Division of Drinking Water.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) As authorized in 19-4-106(3) of the Utah Code, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction, as specified in rule R309-500-4 General. Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary.

(8) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) If a revenue bond is to be used to secure a loan, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements will be established after the Board's staff has reviewed and analyzed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to execute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs, or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to determine if there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond may be required by the Board insuring the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall execute the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds and shall notify the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by 73-10c-6(3)(d) of the Utah Code. If an interest buy-down agreement is being utilized, the bonds shall bear a legend referring to the interest buy-down agreement and state that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

**R309-705-6. Applicant Priority System and Selection of Terms of Assistance.**

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development (financial, technical, or managerial issues needing resolution to avoid EPA intervention).

(e) An Emergency.

The Board will utilize Table 1 to prioritize loan applicants as may be modified by (a), (b), (c), or (d) above.

TABLE 1

Priority System	Points Received
Deficiency Description	

Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or-	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100

Treatment	
Deficiency Description	
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, turbidity standards, or other enforceable drinking water quality standards.	25
B. The required disinfection facilities are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
-or-	
Treatment system equipment does not meet demands of UPDWR including the lead and/or copper action levels.	20
-or-	
System equipment is projected to become inadequate without upgrades.	5
Total	75

Storage	
Deficiency Description	
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or-	
System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or-	
Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75

Distribution	
Deficiency Description	
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or-	
Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75

Emergencies	
Upon the Board finding of an emergency as required by R309-705-9.	Total 100

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI

Factor)

Where:

\* Rate Factor = (Average System Water Bill/Average State Water Bill)

\*\* AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBBI) as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBBI rate down to a potential minimum of zero percent. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

TABLE 2  
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
<b>1. COST EFFECTIVENESS RATIO (SELECT ONE)</b>	
A. Project cost \$0 to \$500 per benefitting connection	13
B. \$501 to \$1,500	11
C. \$1,501 to \$2,000	9
D. \$2,001 to \$3,000	6
E. \$3,001 to \$5,000	3
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
<b>2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)</b>	
A. Less than 70% of State Median AGI	16
B. 71 to 80% of State Median AGI	14
C. 81 to 95% of State Median AGI	12
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
<b>3. APPLICANT'S COMMITMENT TO PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)</b>	
A. Greater than 25% of project funds	15
B. 15 to 25% of project funds	12
C. 10 to 15% of project funds	9
D. 5 to 9% of project funds	6
E. 2 to 4% of project funds	3
F. Less than 2% of project funds	0
<b>4 and 5. ABILITY TO REPAY LOAN:</b>	
<b>4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)</b>	
A. Greater than 2.50% of local median AGI	15
B. 2.01 to 2.50% of local median AGI	11
C. 1.51 to 2.00% of local median AGI	7
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0
<b>5. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)</b>	
A. Greater than 12% of fair market value	15
B. 8.1 to 12% of fair market value	12
C. 4.1 to 8.0% of fair market value	9
D. 2.1 to 4.0% of fair market value	6
E. 1.0 to 2.0% of fair market value	3
F. Less than 1% of fair market value	0
<b>6. SPECIAL INCENTIVES Applicant:</b>	
A. has a replacement fund receiving annual deposits of 5% of drinking water budget, and	5

has already accumulated a minimum of 25% of said annual DW budget in this reserve fund.	
B. is creating or enhancing a regionalization plan	16
C. has a rate structure encouraging conservation	5
<b>TOTAL POSSIBLE POINTS FOR FINANCIAL NEED</b>	<b>100</b>

**R309-705-7. Project Authorization.**

A project may receive written authorization for financial or technical assistance from the Board following submission and favorable review of an application form, engineering report (if required), capacity development (including financial capability) assessment and staff feasibility report. The engineering report shall include a cost effective analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize financial assistance for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

**R309-705-8. Financial Evaluations.**

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of \$150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan,



the Board may purchase either taxable or non-taxable bonds; or a secured promissory note provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment, or a fee (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules exceeding the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board administrative costs will not be charged to the project. However, if the Board Authorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system up to one year of actual use of the project facilities before the first repayment of principal is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) **LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY** - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to

construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

(15) The applicant must have adopted a Water Management and Conservation Plan prior to executing the loan agreement.

### **R309-705-9. Emergency Assistance.**

(1) Authority: Title 73, Chapter 10c of State Statute and the SDWA Amendment of 1996 give the Board authority to provide emergency assistance to drinking water systems.

(2) Eligibility: Generally, any situation occurring as defined in Section R309-705-3 would qualify for consideration for emergency funding. However, prior to authorizing funds for an emergency, the Board may consider one or more of the various factors listed below:

(i) Was the emergency preventable? Did the utility / water system have knowledge that this emergency could be expected? If not. Should it have been aware of the potential for this problem? Did its management take reasonable action to either prevent it or to be as prepared as reasonably possible to correct the problem when it occurred (prepared financially and technically for the event causing the problem)?

(ii) Has the utility / system established a capital improvement replacement reserve fund? Has the utility / system been charging reasonably high rates in order to establish a reserve fund to cover normal infrastructure replacement and emergencies?

(iii) Is the community a disadvantaged (hardship) community?

(iv) Is the potential for illness, injury, or other harm to the public or system operators sufficiently high that the value of providing financial assistance outweighs other factors that would preclude providing this assistance. (Even though the State does not have any legal obligation to provide financial assistance to help correct the problem.)

(3) Requirements for the Applicant: The applicant will be required to do the following as a condition of receiving financial assistance to cope with a drinking water emergency:

(i) To the extent feasible, the utility / system shall first use its own resources, e.g. capital improvement replacement fund, to correct the problem.

(ii) If the utility / system is not placing funds into a reserve fund on a regular basis and / or is charging relatively low water rates it shall be required to examine its current rate structure and policies for placing funds into a reserve account. The Board may require the utility / system to establish a reserve account and / or to revise its rate structure (increasing its rate) as a condition of the loan.

(iii) The Board may place other requirements on the utility / system.

(4) Financial Agreements, Bonding, etc: The State will work with the Applicant to help secure obligating documents. For example, the Board:

(i) Could waive the 30-day notice period, if legally possible.

(ii) Could accept a generic bond.

(iii) Could accept an unsecured loan or bond.

(5) Funding Alternatives: An Applicant may be authorized to receive a loan by any of the financial assistance methods specified in R309-705-4 for funding an emergency project. The Board may set and revise the methodology and factors to be considered when determining the terms of financial assistance it provides including assigning a priority it deems appropriate. The terms of the loan, including length of repayment period, interest or hardship grant assessment, and principal forgiveness (grant) or repayment waivers will be determined at the time the emergency funding is authorized.

(6) Funding Process - The Board must find that an emergency exists according to the criteria in R309-705-9(2). It is anticipated that under normal emergency conditions time restraints will not allow a request for emergency funding to be placed on the agenda of a regularly scheduled Board meeting or adoption and advertisement of a project priority list. Therefore, the following procedures will be followed in processing a loan application for emergency assistance:

(i) Division staff will evaluate each application for emergency funding according to the criteria listed in R309-705-9(2). Staff will solicit recommendations from the LHD and District Engineer about the proposed project to mitigate the emergency. Staff will submit a report of its findings to the Board Chairperson or designee.

(ii) The Board Chairperson or designee will arrange for a timely meeting of the Board to consider authorizing assistance for the emergency. This meeting may be conducted by telephone.

#### **R309-705-10. Committal of Funds and Approval of Agreements.**

After the Board has issued a Plan Approval, the loan, credit enhancement, interest buy-down, or hardship grant will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute the loan or credit enhancement agreement if no aspects of the project have changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

#### **R309-705-11. Construction.**

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated

with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Executive Secretary before execution. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

#### **R309-705-12. Compliance with Federal Requirements.**

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) Applicant(s) shall require its contractors to comply with federal provisions for disadvantaged business enterprises and exclusions for businesses under suspension and/or debarment. Any bidder not complying with these requirements shall be considered a non-responsive bidder.

(3) As required by Federal Code, applicants may be subject to the following federal requirements (all assessments shall consider the impacts of the project twenty (20) years into the future):

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements.

**KEY: SDWA, financial assistance, loans**  
**January 28, 2009**  
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**19-4-104**  
**73-10c**

**R315. Environmental Quality, Solid and Hazardous Waste.**  
**R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.**  
**R315-302-1. Location Standards for Disposal Facilities.**

(1) Applicability.  
 (a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:  
 (i) Class I, II, and V Landfills;  
 (ii) Class III Landfills as specified in Rule R315-304;  
 (iii) Class IV and VI Landfills as specified in Rule R315-305;

(iv) piles that are to be closed as landfills; and  
 (v) Incinerators as specified in Rule R315-306.

(b) These standards, except for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;  
 (ii) a transfer station or a drop box facility;  
 (iii) a pile used for storage;  
 (iv) composting or utilization of sludge or other solid waste on land; or

(v) a hazardous waste disposal sites regulated by Rules R315-1 through R315-50 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:  
 (A) national, state, county, or city park, monument, or recreation area;  
 (B) designated wilderness or wilderness study area;  
 (C) wild and scenic river area; or  
 (D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) farmland classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(iv) one-fourth mile of:  
 (A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(v) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(vi) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.  
 (i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Executive Secretary that an alternative

setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Executive Secretary that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Executive Secretary that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Executive Secretary that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean

Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Executive Secretary:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Executive Secretary, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Alternative.

(A) Subject to the ground water performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Executive Secretary may approve, on a site specific basis, an alternative ground water monitoring system at the facility or may waive the ground water monitoring requirement. If ground water monitoring is waived the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the ground water quality standards specified in

Subsection R315-303-2(1) and the approved alternative shall be revoked by the Executive Secretary if the operation of the facility impacts ground water.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for all areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-1 may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the Executive Secretary.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

### **R315-302-2. General Facility Requirements.**

(1) Applicability.

(a) Each new and existing solid waste facility for which a permit is required by Section R315-310-1, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rules R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, or R315-314.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Executive Secretary, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Executive Secretary that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the Executive Secretary that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Prior to the acceptance of waste or beginning operations at the facility, the owner or operator of a transfer station facility must receive notice from the Executive Secretary that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Executive Secretary. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Executive Secretary or his authorized representative. The facility must be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the Executive Secretary no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind-blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the Executive Secretary.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Executive Secretary, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Executive Secretary.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Executive Secretary by March 1 of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received;

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of ground water monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted (delivered in a compaction vehicle) - 0.30 tons per cubic yard.

(ii) Construction/demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on site specific data, developed by the owner or operator of the facility.

(d) If an owner or operator of a municipal landfill or a construction/demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste when approved by the Executive Secretary.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the

inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Executive Secretary or his authorized representative upon request.

(b) The Executive Secretary or any duly authorized officer, employee, or representative of the Board may, at any reasonable time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the Executive Secretary.

### **R315-302-3. General Closure and Post Closure Requirements.**

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(9). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304; and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) which, when approved by the Executive Secretary, will

become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Executive Secretary may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Executive Secretary.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Executive Secretary of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Executive Secretary if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, he shall, within 90 days or as required by the Executive Secretary, submit to the Executive Secretary:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Executive Secretary determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Executive Secretary to protect human health and the environment for a period of 30 years or a period established by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the Executive Secretary as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site

becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Executive Secretary may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Executive Secretary may direct that post-closure activities cease until the owner or operator receives a notice from the Executive Secretary to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Executive Secretary, the owner or operator shall submit a certification to the Executive Secretary, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Executive Secretary finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Executive Secretary may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

**KEY: solid waste management, waste disposal**

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**R317. Environmental Quality, Water Quality.****R317-1. Definitions and General Requirements.****R317-1-1. Definitions.**

1.1 "Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "COD" means chemical oxygen demand.

1.8 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.9 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.10 "Division" means the Utah State Division of Water Quality.

1.11 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.12 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.13 "Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

1.14 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.15 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.16 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.17 "Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

1.18 "Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Board controls the installation of such systems.

1.19 "Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

1.20 "Operating Permit" is a State issued permit issued to any wastewater treatment works covered under R317-3 or R317-

5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

1.21 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.22 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.23 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.24 "Sewage" is synonymous with the term "domestic wastewater".

1.25 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.26 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.27 "SS" means suspended solids.

1.28 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.30 "TSS" means total suspended solids.

1.31 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

1.32 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.33 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.34 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except

that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

### **R317-1-2. General Requirements.**

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Board or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet or less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

#### **F. Exceptions.**

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be

determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

### **R317-1-3. Requirements for Waste Discharges.**

#### **3.1 Compliance With Water Quality Standards.**

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards), except that the Board may waive compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

#### **3.2 Compliance With Secondary Treatment Requirements.**

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-

day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of *E. coli* bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

#### 3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

#### 3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

### **R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.**

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following

manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

### **R317-1-5. Use of Industrial Wastewaters.**

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

### **R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.**

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

### **R317-1-7. TMDLs.**

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

- 7.1 Bear River -- December 23, 1997
- 7.2 Chalk Creek -- December 23, 1997
- 7.3 Otter Creek -- December 23, 1997
- 7.4 Little Bear River -- May 23, 2000
- 7.5 Mantua Reservoir -- May 23, 2000
- 7.6 East Canyon Creek -- September 1, 2000
- 7.7 East Canyon Reservoir -- September 1, 2000
- 7.8 Kents Lake -- September 1, 2000
- 7.9 LaBaron Reservoir -- September 1, 2000
- 7.10 Minersville Reservoir -- September 1, 2000
- 7.11 Puffer Lake -- September 1, 2000
- 7.12 Scofield Reservoir -- September 1, 2000
- 7.13 Onion Creek (near Moab) -- July 25, 2002
- 7.14 Cottonwood Wash -- September 9, 2002
- 7.15 Deer Creek Reservoir -- September 9, 2002
- 7.16 Hyrum Reservoir -- September 9, 2002
- 7.17 Little Cottonwood Creek -- September 9, 2002
- 7.18 Lower Bear River -- September 9, 2002
- 7.19 Malad River -- September 9, 2002
- 7.20 Mill Creek (near Moab) -- September 9, 2002
- 7.21 Spring Creek -- September 9, 2002
- 7.22 Forsyth Reservoir -- September 27, 2002
- 7.23 Johnson Valley Reservoir -- September 27, 2002
- 7.24 Lower Fremont River -- September 27, 2002
- 7.25 Mill Meadow Reservoir -- September 27, 2002
- 7.26 UM Creek -- September 27, 2002
- 7.27 Upper Fremont River -- September 27, 2002
- 7.28 Deep Creek -- October 9, 2002
- 7.29 Uinta River -- October 9, 2002
- 7.30 Pineview Reservoir -- December 9, 2002

- 7.31 Browne Lake -- February 19, 2003
- 7.32 San Pitch River -- November 18, 2003
- 7.33 Newton Creek -- June 24, 2004
- 7.34 Panguitch Lake -- June 24, 2004
- 7.35 West Colorado -- August 4, 2004
- 7.36 Silver Creek -- August 4, 2004
- 7.37 Upper Sevier River -- August 4, 2004
- 7.38 Lower and Middle Sevier River -- August 17, 2004
- 7.39 Lower Colorado River -- September 20, 2004
- 7.40 Upper Bear River -- August 4, 2006
- 7.41 Echo Creek -- August 4, 2006
- 7.42 Soldier Creek -- August 4, 2006
- 7.43 East Fork Sevier River -- August 4, 2006
- 7.44 Koosharem Reservoir -- August 4, 2006
- 7.45 Lower Box Creek Reservoir -- August 4, 2006
- 7.46 Otter Creek Reservoir -- August 4, 2006
- 7.47 Thistle Creek -- July 9, 2007
- 7.48 Strawberry Reservoir -- July 9, 2007
- 7.49 Matt Warner Reservoir -- July 9, 2007
- 7.50 Calder Reservoir -- July 9, 2007
- 7.51 Lower Duchesne River -- July 9, 2007
- 7.52 Lake Fork River -- July 9, 2007
- 7.53 Brough Reservoir -- August 22, 2008
- 7.54 Steinaker Reservoir -- August 22, 2008
- 7.55 Red Fleet Reservoir -- August 22, 2008
- 7.56 Newcastle Reservoir -- August 22, 2008

### **R317-1-8. Penalty Criteria for Civil Settlement Negotiations.**

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to \$10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to \$25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty

categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - \$2,000 to \$7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - \$500 to \$2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to \$500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to

award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

#### **R317-1-9. Electronic Submissions and Electronic Signatures.**

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Executive Secretary to ensure that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**KEY: water pollution, waste disposal, industrial waste, effluent standards**

April 1, 2010

19-5

Notice of Continuation October 2, 2007

**R317. Environmental Quality, Water Quality.****R317-2. Standards of Quality for Waters of the State.****R317-2-1A. Statement of Intent.**

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

**R317-2-1B. Authority.**

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

**R317-2-1C. Triennial Review.**

The water quality standards shall be reviewed and updated, if necessary, at least once every three years. The Executive Secretary will seek input through a cooperative process from stakeholders representing state and federal agencies, various interest groups, and the public to develop a preliminary draft of changes. Proposed changes will be presented to the Water Quality Board for information. Informal public meetings may be held to present preliminary proposed changes to the public for comments and suggestions. Final proposed changes will be presented to the Water Quality Board for approval and authorization to initiate formal rulemaking. Public hearings will be held to solicit formal comments from the public. The Executive Secretary will incorporate appropriate changes and return to the Water Quality Board to petition for formal adoption of the proposed changes following the Division of Administrative Rules' rulemaking procedures.

**R317-2-2. Scope.**

These standards shall apply to all waters of the state and shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

**R317-2-3. Antidegradation Policy.****3.1 Maintenance of Water Quality**

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment

associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

**3.2 Category 1 Waters**

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

**3.3 Category 2 Waters**

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

**3.4 Category 3 Waters**

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

**3.5 Antidegradation Review (ADR)**

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

**a. Activities Subject to Antidegradation Review (ADR)**

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not

be further lowered by the proposed activity, examples include situations where:

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

(d) a new or renewed UPDES permit is being issued, and water quality-based effluent limits are not required for a specific pollutant because it has been determined that the discharge will not cause, have reasonable potential to cause, or contribute to an exceedance of a State water quality standard for the pollutant.

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under CWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders

may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water

in the stream for instream flow purposes than to remove the discharge to the stream.

### 3. Special Procedures for 404 Permits.

For 404 permitted activities, all appropriate alternatives to avoid and minimize degradation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse effects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers:

(a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary):

(b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and

(c) requires mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

### 4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

### 6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

### 7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the

case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

### d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

### e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice will be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

### f. Implementation Procedures

The Executive Secretary shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

## R317-2-4. Colorado River Salinity Standards.



In addition to quality protection afforded by these regulations to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, and 2008 Reviews of the above documents.

### R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed 200 feet and the size of an acute mixing zone shall not exceed 35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

- a. Bioaccumulation in fish tissues or wildlife,
- b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,
- c. Potential human exposure to pollutants resulting from drinking water or recreational activities,
- d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.
- e. Toxicity of the substance discharged,
- f. Zone of passage for migrating fish or other species (including access to tributaries), or
- g. Accumulative effects of multiple discharges and mixing zones.

### R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

- a. Class 1A -- Reserved.
- b. Class 1B -- Reserved.
- c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking,

diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the Antelope Island Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

**R317-2-7. Water Quality Standards.**

## 7.1 Application of Standards

The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these regulations for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis. The Board may allow site specific modifications based upon bioassay or other tests performed in accordance with standard procedures determined by the Board.

## 7.2 Narrative Standards

It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.

**R317-2-8. Protection of Downstream Uses.**

All actions to control waste discharges under these regulations shall be modified as necessary to protect downstream designated uses.

**R317-2-9. Intermittent Waters.**

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

**R317-2-10. Laboratory and Field Analyses.**

## 10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Utah Division of Water Quality by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

## 10.2 Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

**R317-2-11. Public Participation.**

Public hearings will be held to review all proposed revisions of water quality standards, designations and classifications, and public meetings may be held for consideration of discharge requirements set to protect water uses under assigned classifications.

**R317-2-12. Category 1 and Category 2 Waters.**

## 12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from U.S. Highway 189 to headwaters.

Weber River and tributaries, from U.S. Highway 189 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake

City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County).

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

b. Weber River Drainage

Weber River from Uintah to Mountain Green.

6).

a. Colorado River Drainage

13.1 Upper Colorado River Basin

TABLE

Paria River and tributaries, from state line to headwaters	2B	3C	4
All tributaries to Lake Powell, except as listed below	2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek	2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River	2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters	2B	3A	4
Fremont River and tributaries, from confluence with Muddy Creek to Capitol Reef National Park, except as listed below	1C	2B	3C
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park	2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2B	3A
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing, except as listed below	2B	3C	4
Quitcupah Creek and tributaries, from Highway U-10 crossing to headwaters	2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters	2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A
San Juan River and tributaries, from Lake Powell to state line except as listed below:	1C	2A	3B
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters	2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A
Spring Creek and tributaries, from confluence with Vega			

Creek to headwaters	2B	3A	4	Cottonwood Canal, Emery County	1C	2B	3E	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4	Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course	2B	3C	4
Colorado River and tributaries, from Lake Powell to state line except as listed below	1C	2A	3B	4	Except as listed below Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A	4	Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Treatment Plant intake.	2B	3A	4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters	2B	3C	4	Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A	4	Range Creek and tributaries, from confluence with Green River to Range Creek Ranch	2B	3A	4
Dolores River and tributaries, from confluence with Colorado River to state line	2B	3C	4	Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters	2B	3A	4	Rock Creek and tributaries, from confluence with Green River to headwaters	2B	3A	4	
LaSal Creek and tributaries, from state line to headwaters	2B	3A	4	Nine Mile Creek and tributaries, from confluence with Green River to headwaters	2B	3A	4	
Lion Canyon Creek and tributaries, from state line to headwaters	2B	3A	4	Pariette Draw and tributaries, from confluence with Green River to headwaters	2B	3B	3D	4
Little Dolores River and tributaries, from confluence with Colorado River to state line	2B	3C	4	Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters	2B	3A	4	
Bitter Creek and tributaries, from confluence with Colorado River to headwaters	2B	3C	4	White River and tributaries, from confluence with Green River to state line, except as listed below	2B	3B	4	

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2A	3B	4	Bitter Creek and Tributaries from White River to Headwaters	2B	3A	4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters	2B	3C	4	Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below	2B	3B	4	
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek	2B	3C	4	Uinta River and tributaries, From confluence with Duchesne River to Highway US-40 crossing	2B	3B	4	
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir	2B	3C	4	Uinta River and tributaries, From Highway US-4- crossing to headwaters	2B	3A	4	
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing	2B	3C	4	Power House Canal from Confluence with Uinta River to headwaters	2B	3A	4	
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4	Whiterocks River and Canal, From Tridell Water Treatment Plant to Headwaters	1C	2B	3A
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing	2B	3C	4	Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A	4
Highway U-57 crossing Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A	4	Lake Fork River and tributaries, from confluence with Duchesne River to			

headwaters	1C	2B 3A	4					
Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B	3E 4					
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B	3E 4					
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B 3B	4					
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B 3A	4					
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B 3B	4					
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B 3A	4					
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B 3A						
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B 3A	4					
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B 3A	4					
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:	2A	3A	4					
Sears Creek and tributaries, Daggett County		2B 3A						
Tolivers Creek and tributaries, Daggett County		2B 3A						
Red Creek and tributaries, from confluence with Green River to state line		2B 3C	4					
Jackson Creek and tributaries, Daggett County		2B 3A						
Davenport Creek and tributaries, Daggett County		2B 3A						
Goslin Creek and tributaries, Daggett County		2B 3A						
Gorge Creek and tributaries, Daggett County		2B 3A						
Beaver Creek and tributaries, Daggett County		2B 3A						
O-Wi-Yu-Kuts Creek and tributaries, County		2B 3A						
Tributaries to Flaming Gorge Reservoir, except as listed below		2B 3A	4					
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B 3C	4					
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B 3A						
All Tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B 3A	4					
				<b>13.2 Lower Colorado River Basin</b>				
				<b>a. Virgin River Drainage</b>				
				TABLE				
				Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B 3B		4
				Virgin River and tributaries from state line to Quail Creek diversion except as listed below		2B 3B		4
				Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B 3B		4
				Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B 3A		4
				Leed's Creek, from confluence with Quail Creek to headwaters		2B 3A		4
				Quail Creek from Quail Creek Reservoir to headwaters	1C	2B 3A		4
				Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B 3A		4
				Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B 3A		4
				Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below	1C	2B 3C		4
				North Fork Virgin River and tributaries	1C 2A	3A		4
				East Fork Virgin River, from town of Glendale to headwaters		2B 3A		4
				Kolob Creek, from confluence with Virgin River to headwaters		2B 3A		4
				<b>b. Kanab Creek Drainage</b>				
				TABLE				
				Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B 3C		4
				Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B 3A		4
				Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon		2B 3C		4
				Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B 3A		4
				<b>13.3 Bear River Basin</b>				
				<b>a. Bear River Drainage</b>				
				TABLE				
				Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B 3B 3D		4
				Perry Canyon Creek from U.S. Forest boundary to headwaters		2B 3A		4
				Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)		2B 3C		4

Box Elder Creek, from Brigham City Reservoir (the Mayor's Pond) to headwaters	2B 3A	4	To Pineview Dam, except as listed Below	2B 3A	4
Salt Creek, from confluence with Bear River to Crystal Hot Springs	2B 3B 3D		Wheeler Creek from Confluence with Ogden River to headwaters	1C 2B 3A	4
Malad River and tributaries, from confluence with Bear River to state line	2B 3C		All tributaries to Pineview Reservoir	1C 2B 3A	4
Little Bear River and tributaries, from Cutler Reservoir to headwaters	2B 3A 3D	4	Strong's Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Logan River and tributaries, from Cutler Reservoir to headwaters	2B 3A 3D	4	Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C 2B 3A	
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters	2B 3A	4	Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C 2B 3A	4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir	2B 3A	4	Weber River and tributaries, from Stoddard diversion to headwaters	1C 2B 3A	4

**13.5 Utah Lake-Jordan River Basin  
a. Jordan River Drainage**

TABLE

Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters	2B 3A	4	Jordan River, from Farmington Bay to North Temple Street, Salt Lake City	2B 3B * 3D	4
Summit Creek and tributaries, from confluence with Bear River to headwaters	2B 3A	4	State Canal, from Farmington Bay to confluence with the Jordan River	2B 3B * 3D	4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:	2B 3B	4	Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek	2B 3B *	4
High Creek and tributaries, from confluence with Cub River to headwaters	2B 3A	4	Surplus Canal from Great Salt Lake to the diversion from the Jordan River	2B 3B * 3D	4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below	2B 3A	4	Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion	2B 3A	4
Swan Springs tributary to Swan Creek	1C 2B 3A		Jordan River, from Narrows Diversion to Utah Lake	1C 2B 3B	4
Bear River and tributaries in Rich County	2B 3A	4	City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant	2B 3A	
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)	2B 3A	4	City Creek, from City Creek Water Treatment Plant to headwaters	1C 2B 3A	
Mill Creek and tributaries, from state line to headwaters (Summit County)	2B 3A	4	Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C 2B 3A	

**13.4 Weber River Basin  
a. Weber River Drainage**

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters	2B 3A	4	Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir to headwaters	1C 2B 3A	
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:	2B 3C 3D	4	Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C 2B 3A	
Four Mile Creek from I-15 To headwaters	2B 3A	4	Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15	2B 3C	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below	2B 3A	4	Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters	2B 3A	4
Ogden River and tributaries, From confluence with Weber River					

Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant	2B 3A	4	Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C 2B 3A		Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters	2B 3B	4
Deaf Smith Canyon Creek and tributaries	1C 2B 3A	4	Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge	2B 3B	4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant	2B 3A	4	Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way	2B 3B	4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C 2B 3A		Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters	2B 3D	4
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C 2B 3A		Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters	2B 3A	4
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C 2B 3A		Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way	2B 3C	4
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C 2B 3A		Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek	2B 3A	4
South Fork of Dry Creek and tributaries, from Draper			Hobble Creek and tributaries, from Utah Lake to headwaters	2B 3A	4
Irrigation Company diversion to headwaters	1C 2B 3A		Dry Creek and tributaries from Utah Lake (Provo Bay) to Highway-US 89	2B 3E	4
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)	2B 3D	4			
Kersey Creek from confluence of C-7 Ditch to headwaters	2B 3D				

\* Site specific criteria for dissolved oxygen. See Table 2.14.5.

**b. Provo River Drainage**

TABLE

Provo River and tributaries, from Utah Lake to Murdock diversion	2B 3A	4	Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction	2B 3B 3D	4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below	1C 2B 3A	4	Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters	2B 3A	4
Upper Falls drainage above Provo City diversion	1C 2B 3A		Benjamin Slough and tributaries from Utah Lake to headwaters, except as listed below	2B 3B	4
Bridal Veil Falls drainage above Provo City diversion	1C 2B 3A				
Lost Creek and tributaries above Provo City diversion	1C 2B 3A		Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters	2B 3C	4

**c. Utah Lake Drainage**

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters	2B 3A	4	Salt Creek, from Nephi diversion to headwaters	2B 3A	4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters	2B 3A	4	Currant Creek, from mouth of Goshen Canyon to Mona Reservoir	2B 3A	4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters	2B 3A	4	Burrison Creek, from Mona Reservoir to headwaters	2B 3A	4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters	2B 3B	4	Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters	2B 3A	4
			Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters	2B 3A	4
			All other permanent streams		

entering Utah Lake	2B	3B	4	Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B 3A	4
<b>13.6 Sevier River Basin</b>						
<b>a. Sevier River Drainage</b>						
TABLE						
Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except as listed below	2B	3C	4	Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters	2B 3A	4
Beaver River and tributaries from Minersville City to headwaters	2B 3A		4	Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters	2B 3A	4
Little Creek and tributaries, From irrigation diversion to Headwaters	2B 3A		4	Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters	2B 3A	4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters	2B 3A		4	San Pitch River and tributaries, from Highway U-132 crossing to headwaters	2B 3A	4
Coal Creek and tributaries	2B 3A		4	Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters	2B 3A	4
Summit Creek and tributaries	2B 3A		4	Sevier River and tributaries, from Annabella diversion to headwaters	2B 3A	4
Parowan Creek and tributaries	2B 3A		4	Monroe Creek and tributaries, from diversion to headwaters	2B 3A	4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:	2B 3A		4	Little Creek and tributaries, from irrigation diversion to headwaters	2B 3A	4
Pioneer Creek and tributaries, Millard County	2B 3A		4	Pinto Creek and tributaries, from Newcastle Reservoir to headwaters	2B 3A	4
Chalk Creek and tributaries, Millard County	2B 3A		4	Coal Creek and tributaries	2B 3A	4
Meadow Creek and tributaries, Millard County	2B 3A		4	Summit Creek and tributaries	2B 3A	4
Corn Creek and tributaries, Millard County	2B 3A		4	Parowan Creek and tributaries	2B 3A	4
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except except as listed below	2B	3B	4	Duck Creek and tributaries	1C 2B 3A	4
Oak Creek and tributaries, Millard County	2B 3A		4	<b>13.7 Great Salt Lake Basin</b>		
Round Valley Creek and tributaries, Millard County	2B 3A		4	<b>a. Western Great Salt Lake Drainage</b>		
TABLE						
Judd Creek and tributaries, Juab County	2B 3A		4	Grouse Creek and tributaries, Box Elder County	2B 3A	4
Meadow Creek and tributaries, Juab County	2B 3A		4	Muddy Creek and tributaries, Box Elder County	2B 3A	4
Cherry Creek and tributaries Juab County	2B 3A		4	Dove Creek and tributaries, Box Elder County	2B 3A	4
Tanner Creek and tributaries, Juab County	2B		3E 4	Pine Creek and tributaries, Box Elder County	2B 3A	4
Baker Hot Springs, Juab County	2B		3D 4	Rock Creek and tributaries, Box Elder County	2B 3A	4
Chicken Creek and tributaries, Juab County	2B 3A		4	Fisher Creek and tributaries, Box Elder County	2B 3A	4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below:	2B	3C 3D	4	Dunn Creek and tributaries, Box Elder County	2B 3A	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B 3A		4	Indian Creek and tributaries, Box Elder County	2B 3A	4
Six Mile Creek and tributaries, Sanpete County	2B 3A		4	Tenmile Creek and tributaries, Box Elder County	2B 3A	4
				Curlew (Deep) Creek, Box Elder County	2B 3A	4
				Blue Creek and tributaries, from		



Great Salt Lake to Blue Creek Reservoir	2B	3D	4	Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line	2B 3A	4
Blue Creek and tributaries, from Blue Creek Reservoir to headwaters	2B	3B	4	Snow Creek and tributaries, Millard County	2B 3B	4
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B 3A	4	Salt Marsh Spring Complex, Millard County	2B 3A	
Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line	2B 3A		4	Twin Springs, Millard County	2B 3B	
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line	2B 3A		4	Tule Spring, Millard County	2B 3C 3D	
North Willow Creek and tributaries, Tooele County	2B 3A		4	Coyote Spring Complex, Millard County	2B 3C 3D	
South Willow Creek and tributaries, Tooele County	2B 3A		4	Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)	2B 3D	4
Hickman Creek and tributaries, Tooele County	2B 3A		4	Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters	2B 3A	4
Barlow Creek and tributaries, Tooele County	2B 3A		4	Shoal Creek and tributaries, Iron County	2B 3A	4
Clover Creek and tributaries, Tooele County	2B 3A		4	<b>b. Farmington Bay Drainage</b>		
Faust Creek and tributaries, Tooele County	2B 3A		4	TABLE		
Vernon Creek and tributaries, Tooele County	2B 3A		4	Corbett Creek and tributaries, from Highway to headwaters	2B 3A	4
Ophir Creek and tributaries, Tooele County	2B 3A		4	Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary	2B 3B	4
Soldier Creek and Tributaries from the Drinking Water Treatment Facility Headwaters, Tooele County	1C	2B 3A	4	North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	2B 3A	4
Settlement Canyon Creek and tributaries, Tooele County	2B 3A		4	Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Middle Canyon Creek and tributaries, Tooele County	2B 3A		4	South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Tank Wash and tributaries, Tooele County	2B 3A		4	Snow Creek and tributaries	2B 3C	4
Basin Creek and tributaries, Juab and Tooele Counties	2B 3A		4	Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary	2B 3B	4
Thomas Creek and tributaries, Juab County	2B 3A		4	Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Indian Farm Creek and tributaries, Juab County	2B 3A		4	Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15	2B 3C	4
Cottonwood Creek and tributaries, Juab County	2B 3A		4	Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89	2B 3B	4
Red Cedar Creek and tributaries, Juab County	2B 3A		4	Baer Creek and tributaries, from Highway US-89 to headwaters	1C 2B 3A	4
Granite Creek and tributaries, Juab County	2B 3A		4	Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Trout Creek and tributaries, Juab County	2B 3A		4	Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary	2B 3B	4
Birch Creek and tributaries, Juab County	2B 3A		4	Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties	2B 3A		4	Rudd Creek and tributaries, from Davis aqueduct to headwaters	2B 3A	4
Cold Spring, Juab County	2B	3C 3D				
Cane Spring, Juab County	2B	3C 3D				

Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A	4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B 3A	4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B 3A	4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B 3A	4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B 3A	4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B 3A	4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B 3A	4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B 3A	4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A	4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B 3A	4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B 3B	4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A	4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B 3A	4
Howard Slough		2B 3C	4
Hooper Slough		2B 3C	4
Willard Slough		2B 3C	4
Willard Creek to Headwaters	1C	2B 3A	4
Chicken Creek to Headwaters	1C	2B 3A	4
Cold Water Creek to Headwaters	1C	2B 3A	4
One House Creek to Headwaters	1C	2B 3A	4
Garner Creek to Headwaters	1C	2B 3A	4

**13.8 Snake River Basin  
a. Raft River Drainage (Box Elder County)**

TABLE

Raft River and tributaries		2B 3A	4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
Birch Creek and tributaries, from state line to headwaters		2B 3A	4

Pole Creek and tributaries, from state line to headwaters	2B 3A	4
Goose Creek and tributaries	2B 3A	4
Hardesty Creek and tributaries, from state line to headwaters	2B 3A	4
Meadow Creek and tributaries, from state line to headwaters	2B 3A	4

13.9 All irrigation canals and ditches statewide, except as otherwise designated: 2B, 3E, 4

13.10 All drainage canals and ditches statewide, except as otherwise designated: 2B, 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas, and other Areas Associated with the Great Salt Lake

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D
Bear River Bay Open Water below approximately 4,208 ft.			5C
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Brown's Park Waterfowl Management Area, Daggett County	2B 3A	3D	
Clear Lake Waterfowl Management Area, Millard County	2B	3C 3D	
Desert Lake Waterfowl Management Area, Emery County	2B	3C 3D	
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties	2B	3C 3D	
Farmington Bay Open Water below approximately 4,208 ft.			5D
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Fish Springs National Wildlife Refuge, Juab County	2B	3C 3D	
Harold Crane Waterfowl Management Area, Box Elder County	2B	3C 3D	
Gilbert Bay Open Water below approximately 4,208 ft.			5A
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Gunnison Bay Open Water below approximately 4,208 ft.			5B
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Howard Slough Waterfowl Management Area, Weber County	2B	3C 3D	
Locomotive Springs Waterfowl Management Area, Box Elder County	2B	3B	3D
Ogden Bay Waterfowl Management Area, Weber County	2B	3C 3D	
Ouray National Wildlife Refuge, Uintah County	2B	3B	3D

Powell Slough Waterfowl Management Area, Utah County	2B	3C 3D	
Public Shooting Grounds Waterfowl Management Area, Box Elder County	2B	3C 3D	
Salt Creek Waterfowl Management Area, Box Elder County	2B	3C 3D	
Stewart Lake Waterfowl Management Area, Uintah County	2B	3B 3D	
Timpie Springs Waterfowl Management Area, Tooele County	2B	3B 3D	

portion)	1C 2A 2B 3A	4
Long Park Reservoir	1C 2B 3A	4
Sheep Creek Reservoir	2B 3A	4
Spirit Lake	2B 3A	4
Upper Potter Lake	2B 3A	4
<b>f. Davis County</b>		
	TABLE	
Farmington Ponds	2B 3A	4
Kaysville Highway Ponds	2B 3A	4
Holmes Creek Reservoir	2B 3B	4

13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE			
Anderson Meadow Reservoir	2B 3A		4
Manderfield Reservoir	2B 3A		4
LaBaron Reservoir	2B 3A		4
Kent's Lake	2B 3A		4
Minersville Reservoir	2B 3A	3D	4
Puffer Lake	2B 3A		
Three Creeks Reservoir	2B 3A		4

b. Box Elder County

TABLE			
Cutler Reservoir (including portion in Cache County)	2B 3B	3D	4
Etna Reservoir	2B 3A		4
Lynn Reservoir	2B 3A		4
Mantua Reservoir	2B 3A		4
Willard Bay Reservoir	1C 2A 2B	3B 3D	4

c. Cache County

TABLE			
Hyrum Reservoir	2A 2B 3A**		4
Newton Reservoir	2B 3A		4
Porcupine Reservoir	2B 3A		4
Pelican Pond	2B 3B		4
Tony Grove Lake	2B 3A		4

d. Carbon County

TABLE			
Grassy Trail Creek Reservoir	1C 2B 3A		4
Olsen Pond	2B 3B		4
Scotfield Reservoir	1C 2B 3A		4

e. Daggett County

TABLE			
Browne Reservoir	2B 3A		4
Daggett Lake	2B 3A		4
Flaming Gorge Reservoir (Utah			

g. Duchesne County

TABLE			
Allred Lake	2B 3A		4
Atwine Lake	2B 3A		4
Atwood Lake	2B 3A		4
Betsy Lake	2B 3A		4
Big Sandwash Reservoir	1C 2B 3A		4
Bluebell Lake	2B 3A		4
Brown Duck Reservoir	2B 3A		4
Butterfly Lake	2B 3A		4
Cedarview Reservoir	2B 3A		4
Chain Lake #1	2B 3A		4
Chepeta Lake	2B 3A		4
Clements Reservoir	2B 3A		4
Cleveland Lake	2B 3A		4
Cliff Lake	2B 3A		4
Continent Lake	2B 3A		4
Crater Lake	2B 3A		4
Crescent Lake	2B 3A		4
Daynes Lake	2B 3A		4
Dean Lake	2B 3A		4
Doll Lake	2B 3A		4
Drift Lake	2B 3A		4
Elbow Lake	2B 3A		4
Farmer's Lake	2B 3A		4
Fern Lake	2B 3A		4
Fish Hatchery Lake	2B 3A		4
Five Point Reservoir	2B 3A		4
Fox Lake Reservoir	2B 3A		4
Governor's Lake	2B 3A		4
Granddaddy Lake	2B 3A		4
Hoover Lake	2B 3A		4
Island Lake	2B 3A		4
Jean Lake	2B 3A		4

Jordan Lake	2B 3A	4	TABLE		
Kidney Lake	2B 3A	4	Barney Lake	2B 3A	4
Kidney Lake West	2B 3A	4	Cyclone Lake	2B 3A	4
Lily Lake	2B 3A	4	Deer Lake	2B 3A	4
Midview Reservoir (Lake Boreham)	2B 3B	4	Jacob's Valley Reservoir	2B 3C 3D	4
Milk Reservoir	2B 3A	4	Lower Bowns Reservoir	2B 3A	4
Mirror Lake	2B 3A	4	North Creek Reservoir	2B 3A	4
Mohawk Lake	2B 3A	4	Panguitch Lake	2B 3A	4
Moon Lake	1C 2A 2B 3A	4	Pine Lake	2B 3A	4
North Star Lake	2B 3A	4	Oak Creek Reservoir (Upper Bowns)	2B 3A	4
Palisade Lake	2B 3A	4	Pleasant Lake	2B 3A	4
Pine Island Lake	2B 3A	4	Posey Lake	2B 3A	4
Pinto Lake	2B 3A	4	Purple Lake	2B 3A	4
Pole Creek Lake	2B 3A	4	Raft Lake	2B 3A	4
Potter's Lake	2B 3A	4	Row Lake #3	2B 3A	4
Powell Lake	2B 3A	4	Row Lake #7	2B 3A	4
Pyramid Lake	2A 2B 3A	4	Spectacle Reservoir	2B 3A	4
Queant Lake	2B 3A	4	Tropic Reservoir	2B 3A	4
Rainbow Lake	2B 3A	4	West Deer Lake	2B 3A	4
Red Creek Reservoir	2B 3A	4	Wide Hollow Reservoir	2B 3A	4
Rudolph Lake	2B 3A	4	<b>j. Iron County</b>		
Scout Lake	2A 2B 3A	4	TABLE		
Spider Lake	2B 3A	4	Newcastle Reservoir	2B 3A	4
Spirit Lake	2B 3A	4	Red Creek Reservoir	2B 3A	4
Starvation Reservoir	1C 2A 2B 3A	4	Yankee Meadow Reservoir	2B 3A	4
Superior Lake	2B 3A	4	<b>k. Juab County</b>		
Swasey Hole Reservoir	2B 3A	4	TABLE		
Taylor Lake	2B 3A	4	Chicken Creek Reservoir	2B 3C 3D	4
Thompson Lake	2B 3A	4	Mona Reservoir	2B 3B	4
Timothy Reservoir #1	2B 3A	4	Sevier Bridge (Yuba) Reservoir	2A 2B 3B	4
Timothy Reservoir #6	2B 3A	4	<b>l. Kane County</b>		
Timothy Reservoir #7	2B 3A	4	TABLE		
Twin Pots Reservoir	1C 2B 3A	4	Navajo Lake	2B 3A	4
Upper Stillwater Reservoir	1C 2B 3A	4	<b>m. Millard County</b>		
X - 24 Lake	2B 3A	4	TABLE		
<b>h. Emery County</b>			DMAD Reservoir	2B 3B	4
TABLE			Fools Creek Reservoir	2B 3C 3D	4
Cleveland Reservoir	2B 3A	4	Garrison Reservoir (Pruess Lake)	2B 3B	4
Electric Lake	2B 3A	4	Gunnison Bend Reservoir	2B 3B	4
Huntington Reservoir	2B 3A	4	<b>n. Morgan County</b>		
Huntington North Reservoir	2A 2B 3B	4	TABLE		
Joe's Valley Reservoir	2A 2B 3A	4	East Canyon Reservoir	1C 2A 2B 3A	4
Millsite Reservoir	1C 2A 2B 3A	4	Lost Creek Reservoir	1C 2B 3A	4
<b>i. Garfield County</b>					

o. Piute County

TABLE			
Barney Reservoir	2B 3A		4
Lower Boxcreek Reservoir	2B 3A		4
Manning Meadow Reservoir	2B 3A		4
Otter Creek Reservoir	2B 3A		4
Piute Reservoir	2B 3A		4
Upper Boxcreek Reservoir	2B 3A		4

p. Rich County

TABLE			
Bear Lake (Utah portion)	2A 2B 3A		4
Birch Creek Reservoir	2B 3A		4
Little Creek Reservoir	2B 3A		4
Woodruff Creek Reservoir	2B 3A		4

q. Salt Lake County

TABLE				
Decker Lake	2B	3B	3D	4
Lake Mary	1C	2B 3A		
Little Dell Reservoir	1C	2B 3A		
Mountain Dell Reservoir	1C	2B 3A		

r. San Juan County

TABLE				
Blanding Reservoir #4	1C	2B 3A		4
Dark Canyon Lake	1C	2B 3A		4
Ken's Lake		2B 3A**		4
Lake Powell (Utah portion)	1C 2A	2B	3B	4
Lloyd's Lake	1C	2B 3A		4
Monticello Lake		2B 3A		4
Recapture Reservoir		2B 3A		4

s. Sanpete County

TABLE				
Duck Fork Reservoir		2B 3A		4
Fairview Lakes	1C	2B 3A		4
Ferron Reservoir		2B 3A		4
Lower Gooseberry Reservoir	1C	2B 3A		4
Gunnison Reservoir		2B	3C	4
Island Lake		2B 3A		4
Miller Flat Reservoir		2B 3A		4
Ninemile Reservoir		2B 3A		4
Palisade Reservoir		2A 2B 3A		4
Rolfson Reservoir		2B	3C	4
Twin Lakes		2B 3A		4
Willow Lake		2B 3A		4

t. Sevier County

TABLE			
Annabella Reservoir	2B 3A		4
Big Lake	2B 3A		4
Farnsworth Lake	2B 3A		4
Fish Lake	2B 3A		4
Forsythe Reservoir	2B 3A		4
Johnson Valley Reservoir	2B 3A		4
Koosharem Reservoir	2B 3A		4
Lost Creek Reservoir	2B 3A		4
Redmond Lake	2B	3B	4
Rex Reservoir	2B 3A		4
Salina Reservoir	2B 3A		4
Sheep Valley Reservoir	2B 3A		4

u. Summit County

TABLE			
Abes Lake	2B 3A		4
Alexander Lake	2B 3A		4
Amethyst Lake	2B 3A		4
Beaver Lake	2B 3A		4
Beaver Meadow Reservoir	2B 3A		4
Big Elk Reservoir	2B 3A		4
Blanchard Lake	2B 3A		4
Bridger Lake	2B 3A		4
China Lake	2B 3A		4
Cliff Lake	2B 3A		4
Clyde Lake	2B 3A		4
Coffin Lake	2B 3A		4
Cuberant Lake	2B 3A		4
East Red Castle Lake	2B 3A		4
Echo Reservoir	1C 2A	2B 3A	4
Fish Lake	2B 3A		4
Fish Reservoir	2B 3A		4
Haystack Reservoir #1	2B 3A		4
Henry's Fork Reservoir	2B 3A		4
Hoop Lake	2B 3A		4
Island Lake	2B 3A		4
Island Reservoir	2B 3A		4
Jesson Lake	2B 3A		4
Kamas Lake	2B 3A		4
Lily Lake	2B 3A		4
Lost Reservoir	2B 3A		4
Lower Red Castle Lake	2B 3A		4
Lyman Lake	2A 2B	3A	4

Marsh Lake		2B 3A	4	Paradise Park Reservoir		2B 3A	4
Marshall Lake		2B 3A	4	Pelican Lake		2B 3B	4
McPheters Lake		2B 3A	4	Red Fleet Reservoir		1C 2A 2B 3A	4
Meadow Reservoir		2B 3A	4	Steinaker Reservoir		1C 2A 2B 3A	4
Meeks Cabin Reservoir		2B 3A	4	Towave Reservoir		2B 3A	4
Notch Mountain Reservoir		2B 3A	4	Weaver Reservoir		2B 3A	4
Red Castle Lake		2B 3A	4	Whiterocks Lake		2B 3A	4
Rockport Reservoir		1C 2A 2B 3A	4	Workman Lake		2B 3A	4

x. Utah County

TABLE

Ryder Lake		2B 3A	4	Salem Pond		2A 3A	4
Sand Reservoir		2B 3A	4	Silver Flat Lake Reservoir		2B 3A	4
Scow Lake		2B 3A	4	Tibble Fork Reservoir		2B 3A	4
Smith Moorehouse Reservoir		1C 2B 3A	4	Utah Lake		2B 3B 3D	4
Star Lake		2B 3A	4				
Stateline Reservoir		2B 3A	4				
Tamarack Lake		2B 3A	4				

y. Wasatch County

TABLE

Trial Lake		1C 2B 3A	4	Currant Creek Reservoir		1C 2B 3A	4
Upper Lyman Lake		2B 3A	4	Deer Creek Reservoir		1C 2A 2B 3A	4
Upper Red Castle		2B 3A	4	Jordanelle Reservoir		1C 2A 3A	4
Wall Lake Reservoir		2B 3A	4	Mill Hollow Reservoir		2B 3A	4
Washington Reservoir		2B 3A	4	Strawberry Reservoir		1C 2B 3A	4
Whitney Reservoir		2B 3A	4				

v. Tooele County

TABLE

Blue Lake		2B 3B	4
Clear Lake		2B 3B	4
Grantsville Reservoir		2B 3A	4
Horseshoe Lake		2B 3B	4
Kanaka Lake		2B 3B	4
Rush Lake		2B 3B	4
Settlement Canyon Reservoir		2B 3A	4
Stansbury Lake		2B 3B	4
Vernon Reservoir		2B 3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)		1C 2B 3A	4
Bottle Hollow Reservoir		2B 3A	4
Brough Reservoir		2B 3A	4
Calder Reservoir		2B 3A	4
Crouse Reservoir		2B 3A	4
East Park Reservoir		2B 3A	4
Fish Lake		2B 3A	4
Goose Lake #2		2B 3A	4
Matt Warner Reservoir		2B 3A	4
Oaks Park Reservoir		2B 3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B 3A	4
Gunlock Reservoir		1C 2A 2B 3B	4
Ivins Reservoir		2B 3B	4
Kolob Reservoir		2B 3A	4
Lower Enterprise Reservoir		2B 3A	4
Quail Creek Reservoir		1C 2A 2B 3B	4
Upper Enterprise Reservoir		2B 3A	4

aa. Wayne County

TABLE

Blind Lake		2B 3A	4
Cook Lake		2B 3A	4
Donkey Reservoir		2B 3A	4
Fish Creek Reservoir		2B 3A	4
Mill Meadow Reservoir		2B 3A	4
Raft Lake		2B 3A	4

bb. Weber County

TABLE

Causey Reservoir		2B 3A	4
Pineview Reservoir		1C 2A 2B 3A**	4

13.13 Unclassified Waters

All waters not specifically classified are presumptively

classified: 2B, 3D

17.7-21.4 1.8  
21.5-26.2 1.6  
26.3-32.5 1.4

**R317-2-14. Numeric Criteria.**

TABLE 2.14.1  
NUMERIC CRITERIA FOR DOMESTIC,  
RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C	Recreation and Aesthetics		Agriculture 4
		2A	2B	
<b>BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML</b>				
E. coli	(7) 206	126	206	
<b>MAXIMUM (NO.)/100 ML (7)</b>				
E. coli	668	409	668	
<b>PHYSICAL</b>				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
<b>METALS (DISSOLVED, MAXIMUM MG/L) (2)</b>				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
<b>INORGANICS (MAXIMUM MG/L)</b>				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
<b>RADIOLOGICAL (MAXIMUM pCi/L)</b>				
Gross Alpha	15			15
Gross Beta (Combined)	4 mrem/yr			Radium 226, 228
Strontium 90	5			
Tritium	8			
Uranium	20000			
	30			
<b>ORGANICS (MAXIMUM UG/L)</b>				
<b>Chlorophenoxy Herbicides</b>				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
<b>POLLUTION INDICATORS (5)</b>				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	
<b>TEMP (C) MG/L</b>				
12.0	2.4			
12.1-14.6	2.2			
14.7-17.6	2.0			

(4) Site-specific criteria for total dissolved solids may be adopted by rulemaking where it is demonstrated that: (a) a less stringent criterion is appropriate because of natural or un-alterable conditions; or (b) a less stringent, site-specific criterion and/or date-specified criterion is protective of existing and attainable agricultural uses; or (c) a more stringent criterion is attainable and necessary for the protection of sensitive crops. For water quality assessment purposes, up to 10% of representative samples may exceed the standard.

**SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)**

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Coal Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Coal Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

FOOTNOTES:  
(1) Reserved  
(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.  
(3) Maximum concentration varies according to the daily maximum mean air temperature.

South Fork Spring Creek from confluence with Pelican Pond  
Slough Stream to US 89  
1,450 mg/l (Apr.-Sept.)  
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs:  
2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.  
(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2  
NUMERIC CRITERIA FOR AQUATIC WILDLIFE

Parameter	Aquatic Wildlife			
	3A	3B	3C	3D
5 PHYSICAL				
Total Dissolved Gases	(1)	(1)		
Minimum Dissolved Oxygen (MG/L) (2) (2a)				
30 Day Average	6.5	5.5	5.0	5.0
7 Day Average	9.5/5.0	6.0/4.0		
Minimum	8.0/4.0	5.0/3.0	3.0	3.0
Max. Temperature(C)(3)	20	27	27	
Max. Temperature Change (C)(3)	2	4	4	
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)	10	10	15	15
METALS (4) (DISSOLVED, UG/L) (5)				
Aluminum				
4 Day Average (6)	87	87	87	87
1 Hour Average	750	750	750	750
Arsenic (Trivalent)				
4 Day Average	150	150	150	150
1 Hour Average	340	340	340	340
Cadmium (7)				
4 Day Average	0.25	0.25	0.25	0.25
1 Hour Average	2.0	2.0	2.0	2.0
Chromium (Hexavalent)				
4 Day Average	11	11	11	11
1 Hour Average	16	16	16	16
Chromium (Trivalent) (7)				
4 Day Average	74	74	74	74
1 Hour Average	570	570	570	570
Copper (7)				
4 Day Average	9	9	9	9
1 Hour Average	13	13	13	13
Cyanide (Free)				
4 Day Average	5.2	5.2	5.2	
1 Hour Average	22	22	22	22
Iron (Maximum)	1000	1000	1000	1000

Lead (7)				
4 Day Average	2.5	2.5	2.5	2.5
1 Hour Average	65	65	65	65
Mercury				
4 Day Average	0.012	0.012	0.012	0.012
1 Hour Average	2.4	2.4	2.4	2.4
Nickel (7)				
4 Day Average	52	52	52	52
1 Hour Average	468	468	468	468
Selenium				
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)				12.5
Silver				
1 Hour Average (7)	1.6	1.6	1.6	1.6
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (13) (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol (Maximum) (MAXIMUM pCi/L)	0.01	0.01	0.01	0.01
RADIOLOGICAL				
Gross Alpha (10)	15	15	15	15
ORGANICS (UG/L) (4)				
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				



4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average		0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)				
	0.05	0.05		

FOOTNOTES:

- (1) Not to exceed 110% of saturation.
- (2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.
- (2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Executive Secretary shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.
- (3) The temperature standard shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.  
Site Specific Standards for Temperature  
Ken's Lake: From June 1<sup>st</sup> - September 20<sup>th</sup>, 27 degrees C.
- (4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.
- (5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.
- (6) The criterion for aluminum will be implemented as follows:  
Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).
- (7) Hardness dependent criteria. 100 mg/l used.  
Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.
- (8) Reserved
- (9) The following equations are used to calculate Ammonia criteria concentrations:  
(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.  
Fish Early Life Stages are Present:  
mg/l as N (Chronic) = ((0.0577/(1+10<sup>7.688-pH</sup>)) + (2.487/(1+

10<sup>pH-7.688</sup>))) \* MIN (2.85, 1.45\*10<sup>0.028\*(25-T)</sup>)  
Fish Early Life Stages are Absent:  
mg/l as N (Chronic) = ((0.0577/(1+10<sup>7.688-pH</sup>)) + (2.487/(1+10<sup>pH-7.688</sup>)))  
\* 1.45\*10<sup>0.028\*(25-MAX(T,7))</sup>)  
(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.  
Class 3A:  
mg/l as N (Acute) = (0.275/(1+10<sup>7.204-pH</sup>)) + (39.0/1+10<sup>pH-7.204</sup>)  
Class 3B, 3C, 3D:  
mg/l as N (Acute) = 0.411/(1+10<sup>7.204-pH</sup>)) + (58.4/(1+10<sup>pH-7.204</sup>))  
In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

- (10) Investigation should be conducted to develop more information where these levels are exceeded.
- (11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.
- (12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.
- (13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is: H<sub>2</sub>S = Dissolved Sulfide \* e<sup>(-1.92 + pH) / 12.05</sup>
- (14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:  
Egg Concentration Triggers: DWQ Responses  
Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.  
5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.  
6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.  
9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.  
12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.  
Antidegradation  
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

TABLE  
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF  
TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0

Table with 2 columns of numerical values ranging from 7.7 to 9.0.

Table with 2 columns of numerical values ranging from 6.8 to 9.0.

TABLE 30-DAY AVERAGE (CHRONIC) CONCENTRATION OF TOTAL AMMONIA AS N (MG/L)

Table with columns for pH, Temperature (C), and Fish Early Life Stages Present. Rows range from 6.5 to 9.0.

TABLE 30-DAY AVERAGE (CHRONIC) CONCENTRATION OF TOTAL AMMONIA AS N (MG/L)

Table with columns for pH, Temperature (C), and Fish Early Life Stages Absent. Rows range from 6.5 to 9.0.

Table with 2 columns of numerical values ranging from 6.5 to 6.7.

TABLE 2.14.3a

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Table with columns for Parameter and Conversion Factor (CF) for various metals: CADMIUM, CHROMIUM III, COPPER, LEAD, NICKEL, SILVER, and ZINC.

TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Table with columns for Parameter and Conversion Factor (CF) for various metals: CADMIUM, CHROMIUM (III), COPPER, LEAD, NICKEL, SILVER, and ZINC.

FOOTNOTE: (1) Hardness as mg/l CaCO3.

TABLE 2.14.4  
EQUATIONS FOR PENTACHLOROPHENOL  
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(pH)) - 5.134}$	$e^{(1.005(pH)) - 4.869}$

TABLE 2.14.5  
SITE SPECIFIC CRITERIA FOR  
DISSOLVED OXYGEN FOR JORDAN RIVER, SURPLUS CANAL, AND STATE  
CANAL  
(SEE SECTION 2.13)

DISSOLVED OXYGEN:	
May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

TABLE 2.14.6  
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism
	Organism Only
(ug/L)	(ug/L)
Class 1C	Class 3A,3B,3C,3D
Antimony	5.6
Arsenic	A
Beryllium	C
Cadmium	C
Chromium III	C
Chromium VI	C
Copper	1,300
Lead	C
Mercury	A
Nickel	100 MCL
Selenium	A
Silver	
Thallium	0.24
Zinc	7,400
Cyanide	140
Asbestos	7 million Fibers/L
2,3,7,8-TCDD Dioxin	5.1 E-9 B
Acrolein	190
Acrylonitrile	0.051 B
Alachlor	2.0
Atrazine	3.0
Benzene	2.2 B
Bromoform	4.3 B
Carbofuran	40
Carbon Tetrachloride	0.23 B
Chlorobenzene	100 MCL
Chlorodibromomethane	0.40 B
Chloroethane	
2-Chloroethylvinyl Ether	
Chloroform	5.7 B
Dalapon	200
Di(2ethylhexyl)adipate	400
Dibromochloropropane	0.2
Dichlorobromomethane	0.55 B
1,1-Dichloroethane	
1,2-Dichloroethane	0.38 B
1,1-Dichloroethylene	7 MCL
Dichloroethylene (cis-1,2)	70
Dinoseb	7.0
Diquat	20
1,2-Dichloropropane	0.50 B
1,3-Dichloropropene	0.34
Endothall	100
Ethylbenzene	530
Ethylene Dibromide	0.05
Glyphosate	700
Haloacetic acids	60 E
Methyl Bromide	47
Methyl Chloride	F
Methylene Chloride	4.6 B
Ocamyl (vidate)	200
Picloram	500
Simazine	4
Styrene	100

1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	1,000	15,000
1,2 -Trans-Dichloroethylene	100 MCL	10,000
1,1,1-Trichloroethane	200 MCL	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	0.025	2.4
Xylenes	10,000	
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	2902,4-
Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	21,000	1,700,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benzidine	0.000086 B	0.00020 B
Benzoanthracene	0.0038 B	0.018 B
Benzoapyrene	0.0038 B	0.018 B
Benzofluoranthene	0.0038 B	0.018 B
Benzophenanthrene		
Benzokfluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-ChloroisopropylEther	1,400	65,000
Bis2-EthylhexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,900
2-Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzo, hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	420	1,300
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	63	190
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	130	140
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutenedine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	40	1,100
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
Phenanthrene		
Pyrene	830	4,000
1,2,4-Trichlorobenzene	35	70
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.2 MCL	1.8
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.059	0.060
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls	0.000064 B,D	0.000064 B,D
PCB's		
Toxaphene	0.00028 B	0.00028 B

Footnotes:  
A. See Table 2.14.2  
B. Based on carcinogenicity of 10-6 risk.

C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics

D. This standard applies to total PCBs.

**KEY: water pollution, water quality standards**

**April 1, 2010**

**19-5**

**Notice of Continuation October 2, 2007**

**R384. Health, Community and Family Health Services, Chronic Disease.****R384-100. Cancer Reporting Rule.****R384-100-1. Purpose Statement.**

(1) The Cancer Reporting Rule is adopted under authority of sections 26-1-30 and 26-5-3.

(2) Cancers constitute a leading cause of morbidity and mortality in Utah and, therefore, pose an important risk to the public health. Through the routine reporting of cancer cases, trends in cancer incidence and mortality can be monitored and prevention and control measures evaluated.

(3) Cancer records are managed by the Utah Cancer Registry (Registry) on behalf of the Utah Department of Health. This Cancer Reporting Rule is adopted to specify the reporting requirements for cases of cancer to the Registry. The Utah Department of Health retains ownership and all rights to the records.

**R384-100-2. Definitions.**

As used in this rule:

(1) "Cancer" means all in-situ (with the exception of in-situ cervical cancers) or malignant neoplasms diagnosed by histology, radiology, laboratory testing, clinical observation, autopsy or suggestible by cytology, but excluding basal cell and squamous cell carcinoma of the skin unless occurring in genital sites such as the vagina, clitoris, vulva, prepuce, penis and scrotum.

(2) "Follow-up data" includes date last seen or date of death, status of disease, date of first recurrence, type of recurrence, distant site(s) of first recurrence, and the name of the physician who is following the case.

(3) "Health care provider" includes any person who renders health care or professional services such as a physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, dentist, optometrist, podiatric physician, osteopathic physician, osteopathic physician and surgeon, or others rendering patient care.

(4) "Registrar" means a person who:

(a) is employed as a registrar and who has attended a cancer registrar training program;

(b) has two years of experience in medical record discharge analysis, coding, and abstracting, and has successfully completed a course in anatomy, physiology, and medical terminology; or

(c) has successfully passed the Certified Tumor Registrar examination offered by the National Cancer Registrars' Association.

(5) "Reportable benign tumor" means any noncancerous neoplasm occurring in the brain.

**R384-100-3. Reportable Cases.**

Each case of cancer or reportable benign tumor, as described in R384-100-2, that is diagnosed or treated in Utah shall be reported to the Utah Cancer Registry, 546 Chipeta Way; Suite 2100; Salt Lake City, Utah 84108, telephone number 801-581-8407, FAX number 801-581-4560.

**R384-100-4. Case Report Contents.**

Each report of cancer or reportable benign tumor shall include information on report forms provided by the Registry. These reports shall be made in the format prescribed by the Registry and shall include items such as the name and address of the patient, medical history, environmental factors, date and method of diagnosis, primary site, stage of disease, tissue diagnosis, laboratory data, methods of treatment, recurrence and follow-up data, and physician names.

**R384-100-5. Agencies or Individuals Required to Report Cases.**

(1) All hospitals, radiation therapy centers, pathology laboratories licensed to provide services in the state, nursing homes, and other facilities and health care providers involved in the diagnosis or treatment of cancer patients shall report or provide information related to a cancer or reportable benign tumor to the Registry.

(2) Procedures for reporting:

(a) Hospital employed registrars shall report hospital cases.

(b) Registrars employed by radiation therapy centers shall report center cases.

(c) Pending implementation of electronic reporting by pathology laboratories, pathology laboratories shall allow the Registry to identify reportable cases and extract the required information during routine visits to pathology laboratories.

(d) If a health care provider diagnoses a reportable case but does not send a tissue specimen to a pathology laboratory or arrange for treatment of the case at a hospital or radiation therapy center, then the health care provider must report the case to the Registry.

(e) If the Registry has not received complete information on a reportable case from routine reporting sources (hospitals, radiation therapy centers, pathology laboratories), the Registry may contact health care providers and require them to complete a report form.

**R384-100-6. Time Requirements.**

(1) New Cases:

(a) Hospitals and radiation therapy facilities shall submit reports to the Registry within six months of the date of diagnosis.

(b) Other facilities and health care providers shall submit reportable data to the Registry upon request.

(2) Follow-up Data:

(a) Hospitals and radiation therapy centers shall submit annual follow-up data to the Registry within 13 months of the date the patient was last contacted by hospital or facility personnel.

(b) Physicians shall submit follow-up data to the Registry upon request.

**R384-100-7. Reporting Format.**

Reports shall be submitted in the standard format designated by the Registry. Report forms can be obtained by contacting the Registry.

**R384-100-8. Data Quality Assurance.**

Records maintained by hospitals, pathology laboratories, cancer clinics, and physicians are subject to review by Registry personnel acting on behalf of the Department of Health to assure the completeness and accuracy of reported data.

**R384-100-9. Confidentiality of Reports.**

All reports required by this rule are confidential under the provisions of Title 26, Chapter 3 and are not open to inspection except as allowed by Title 26, Chapter 3. The Registry shall maintain all reports according to the provisions of Title 26, Chapter 3.

**R384-100-10. Penalties.**

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Cancer Reporting Rule, are prescribed under Section 26-23-6 and are punishable.

**KEY: cancer, reporting requirements and procedures**

March 15, 2010

26-1-30

Notice of Continuation March 25, 2009

26-5-3

**R386. Health, Community Health Services, Epidemiology.**

**R386-702. Communicable Disease Rule.**

**R386-702-1. Purpose Statement.**

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the recent emergence of new diseases, such as Human Immunodeficiency Virus, Hantavirus, and Severe Acute Respiratory Syndrome, and the rapid spread of diseases to the United States from other parts of the world, such as West Nile virus, made possible by advances in transportation, trade, food production, and other factors highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

**R386-702-2. Definitions.**

(1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.

(2) In addition:

(a) "Outbreak" means an epidemic limited to a localized increase in incidence of disease.

(b) "Case" means a person identified as having a disease, health disorder, or condition that is reportable under this rule or that is otherwise under public health investigation.

(c) "Suspect" case means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

**R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.**

(1) The Utah Department of Health declares the following conditions to be of concern to the public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.

- (a) Acquired Immunodeficiency Syndrome
- (b) Adverse event resulting after smallpox vaccination
- (c) Amebiasis
- (d) Anthrax
- (e) Arbovirus infection, including Saint Louis encephalitis and West Nile virus infection
- (f) Botulism
- (g) Brucellosis
- (h) Campylobacteriosis
- (i) Chancroid
- (j) Chickenpox
- (k) Chlamydia trachomatis infection
- (l) Cholera
- (m) Coccidioidomycosis
- (n) Colorado tick fever
- (o) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies
- (p) Cryptosporidiosis

- (q) Cyclospora infection
- (r) Dengue fever
- (s) Diphtheria
- (t) Echinococcosis
- (u) Ehrlichiosis, human granulocytic, human monocytic, or unspecified
- (v) Encephalitis
- (w) Shiga toxin-producing Escherichia coli (STEC) infection
- (x) Giardiasis
- (y) Gonorrhea: sexually transmitted and ophthalmia neonatorum
- (z) Haemophilus influenzae, invasive disease
- (aa) Hansen Disease (Leprosy)
- (bb) Hantavirus infection and pulmonary syndrome
- (cc) Hemolytic Uremic Syndrome, postdiarrheal
- (dd) Hepatitis A
- (ee) Hepatitis B, cases and carriers
- (ff) Hepatitis C, acute and chronic infection
- (gg) Hepatitis, other viral
- (hh) Human Immunodeficiency Virus Infection. Reporting requirements are listed in R388-803
- (ii) Influenza-associated hospitalization
- (jj) Influenza-associated death, in a person less than 18 years of age
- (kk) Legionellosis
- (ll) Listeriosis
- (mm) Lyme Disease
- (nn) Malaria
- (oo) Measles
- (pp) Meningitis
- (qq) Meningococcal Disease
- (rr) Mumps
- (ss) Norovirus, formerly called Norwalk-like virus, infection
- (tt) Pelvic Inflammatory Disease
- (uu) Pertussis
- (vv) Plague
- (ww) Poliomyelitis, paralytic
- (xx) Poliovirus infection, nonparalytic
- (yy) Psittacosis
- (zz) Q Fever
- (aaa) Rabies, human and animal
- (bbb) Relapsing fever, tick-borne and louse-borne
- (ccc) Rocky Mountain spotted fever
- (ddd) Rubella
- (eee) Rubella, congenital syndrome
- (fff) Salmonellosis
- (ggg) Severe Acute Respiratory Syndrome (SARS)
- (hhh) Shigellosis
- (iii) Smallpox
- (jjj) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site
- (kkk) Streptococcal disease, invasive, organism isolated from a normally sterile site
- (lll) Syphilis, all stages and congenital
- (mmm) Tetanus
- (nnn) Toxic-Shock Syndrome, staphylococcal or streptococcal
- (ooo) Trichinosis
- (ppp) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.
- (qqq) Tularemia
- (rrr) Typhoid, cases and carriers
- (sss) Vibriosis
- (ttt) Viral hemorrhagic fever
- (uuu) Yellow fever
- (vvv) Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence

of any illness that may indicate a Bioterrorism event or public health hazard, including any single case or multiple cases of a newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria or a novel influenza strain such as a pandemic influenza strain.

(www) Any outbreak, epidemic, or unusual or increased occurrence of any illness that may indicate an outbreak or epidemic. This includes suspected or confirmed outbreaks of foodborne disease, waterborne disease, disease caused by antimicrobial resistant organisms, any infection that may indicate a bioterrorism event, or of any infection that may indicate a public health hazard.

(2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency:

- (a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);
- (b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);
- (c) influenza-like constitutional symptoms and signs;
- (d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;
- (e) rash illness;
- (f) hemorrhagic illness;
- (g) botulism-like syndrome;
- (h) lymphadenitis;
- (i) sepsis or unexplained shock;
- (j) febrile illness (illness with fever, chills or rigors);
- (k) nontraumatic coma or sudden death; and
- (l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

#### **R386-702-4. Reporting.**

(1) Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-(1)(vvv) or (www) to the local health department or to the Bureau of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the Bureau of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Bureau of Epidemiology, Utah Department of Health.

(2) Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Bureau of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department or the Bureau of Epidemiology, 288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104.

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals

and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child day care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for syphilis, measles, and viral hepatitis.

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.

(4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism, cholera, diphtheria, Haemophilus influenzae (invasive disease), hepatitis A, measles, meningococcal disease, plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, Staphylococcus aureus with resistance (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, syphilis (primary or secondary stage), tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(vvv) or (www) are to be made immediately as provided in R386-702-4(2).

(5) Full reporting of all relevant patient information related to methicillin-resistant Staphylococcus aureus (MRSA) infections, vancomycin-resistant enterococcal (VRE) infections, and laboratory-confirmed influenza are authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.

(6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. Full reporting of all relevant patient information is authorized. The report shall include at least, if known:

- (a) name of the facility;
- (b) a patient identifier;
- (c) date of visit;
- (d) time of visit;
- (e) patient's age;
- (f) patient's sex;
- (g) zip code of patient's residence;
- (h) the reportable condition suspected; and
- (i) whether the patient was admitted to the hospital.

(7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness or health condition. Submission of an isolate does not replace the requirement to report the case also to the local health department or Bureau of Epidemiology, Utah Department of Health. The report shall include the following information for each such encounter:

- (a) facility name;
- (b) date of visit;
- (c) time of visit;
- (d) patient's age;
- (e) patient's sex; and
- (f) patient's zip code for patient's residence.

(8) Mandatory Submission of Isolates: Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory:

- (a) Bacillus anthracis;
- (b) Bordetella pertussis;
- (c) Brucella species;
- (d) Campylobacter species;
- (e) Clostridium botulinum;
- (f) Corynebacterium diphtheriae;

(g) Shiga toxin-producing *Escherichia coli* (STEC) (including enrichment and/or MacKonkey broths that tested positive by enzyme immunoassay for Shiga toxin);

(h) *Francisella tularensis*;

(i) *Haemophilus influenzae*, from normally sterile sites;

(j) Influenza, types A and B;

(k) *Legionella* species;

(l) *Listeria monocytogenes*;

(m) *Mycobacterium tuberculosis* complex;

(n) *Neisseria gonorrhoeae*;

(o) *Neisseria meningitidis*, from normally sterile sites;

(p) *Salmonella* species;

(q) *Shigella* species;

(r) *Staphylococcus aureus* with resistance or intermediate resistance to vancomycin isolated from any site;

(s) *Vibrio* species;

(t) *Yersinia* species; and

(u) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

(9) **Epidemiological Review:** The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) **Confidentiality of Reports:** All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

### **R386-702-5. General Measures for the Control of Communicable Diseases.**

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) **General Control Measures for Reportable Diseases.**

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-11.

(3) **Prevention of the Spread of Disease From a Case.**

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any

communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) **Public Food Handlers.**

A person known to be infected with a communicable disease that can be transmitted by food, water, or milk, or who is suspected of being infected with such a disease may not engage in the commercial handling of food, water, or other drink or be employed in a dairy or on any premises handling milk or milk products, until he is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(5) **Communicable Diseases in Places Where Milk or Food Products are Handled or Processed.**

If a case, carrier, or suspected case of a disease that can be conveyed by milk or food products is found at any place where milk or food products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these milk or food products, the local health department may immediately prohibit the sale, or removal of milk and all other food products from the premises. Sale or distribution of milk or food products from the premise may be resumed when measures have been taken to eliminate the threat to health from the food and its processing as prescribed by R392-100.

(6) **Request for State Assistance.**

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(7) **Approved Laboratories.**

Laboratory analyses which are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

### **R386-702-6. Special Measures for Control of Rabies.**

(1) **Rationale of Treatment.**

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) **Management of Biting Animals.**

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was



appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's

owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-11(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(4) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

#### **R386-702-7. Special Measures for Control of Typhoid.**

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent children under 6 years of age for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces, and of urine in patients with schistosomiasis, taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-7(6). The patient shall be restricted from food handling and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is required for all household members of known typhoid carriers. Household and close contacts shall not be employed in occupations likely to facilitate transmission of the disease, such as food handling, during the period of contact with the infected person until at least two negative feces and urine cultures, taken at least 24 hours apart, are obtained from each contact.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped; or

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state.

#### **R386-702-8. Special Measures for the Control of Ophthalmia Neonatorum.**

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

#### **R386-702-9. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.**

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.

(2) The licensed healthcare provider who provides prenatal care should repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

(a) evidence of clinical hepatitis during pregnancy;

(b) injection drug use;

(c) occurrence during pregnancy or a history of a sexually transmitted disease;

(d) occurrence of hepatitis B in a household or close family contact; or

(e) the judgement of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Utah Department of Health, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record ;

(b) when a pregnant woman is admitted for delivery if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HbsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in Table 3.18, page 328 and Table 3.21, page 333 of the reference listed in subsection (9).

(b) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 15 months of age (3-9 months after the third dose of hepatitis B vaccine) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (b) receive additional vaccine doses and are retested as specified on page 332 of the reference listed in subsection (9).

(c) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(d) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(a) An individual with chronic hepatitis B infection is defined as an individual who is:

(i) HBsAg positive, and total antibody against hepatitis B core antigen (anti-HBc) positive (if done) and IgM anti-HBc negative; or

(ii) HBsAg positive on two tests performed on serum samples obtained at least 6 months apart.

(b) An individual with chronic hepatitis B infection should be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(c) Household members and sex partners of individuals

with chronic hepatitis B infection should be evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, should be offered or advised to obtain vaccination against Hepatitis B.

(9) The Red Book, 2003 Report of the Committee on Infectious Diseases, as referenced in R386-702-12(4) is the reference source for details regarding implementation of the requirements of this section.

#### **R386-702-10. Public Health Emergency.**

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in 702-9(3)(b) and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex;

(f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its

determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

**R386-702-11. Penalties.**

Any person who violates any provision of R386-702 may be assessed a penalty as provided in Section 26-23-6.

**R386-702-12. Official References.**

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 18th ed., Heymann, David L., editor, 2004.

(2) Centers for Disease Control and Prevention. Recommendation of the Immunization Practices Advisory Committee (ACIP): Human rabies Prevention - United States, 1999. "Morbidity and Mortality Weekly Report." 1999; 48: RR-1, 1-21.

(3) The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2008."

(4) American Academy of Pediatrics. "Red Book: 2003 Report of the Committee on Infectious Diseases" 26th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2003.

**KEY: communicable diseases, quarantine, rabies, rules and procedures**

**March 15, 2010**

**26-1-30**

**Notice of Continuation March 22, 2007**

**26-6-3**

**26-23b**

**R386. Health, Epidemiology and Laboratory Services, Epidemiology.****R386-705. Epidemiology, Health Care Associated Infection. R386-705-1. Authority and Purpose.**

This rule establishes reporting requirements for health care associated infections and for influenza vaccination of health care workers. It is authorized by Utah Code Subsections 26-1-30(2)(a), (b), (d), (e), and (g), 26-6-3, and 26-6-7.

**R386-705-2. Definitions.**

For purposes of this rule:

(1) "BSI" means a blood stream infection that meets the criteria in Subsection 22(1).

(2) "Central line" means a vascular access catheter that passes through or has a tip ending at or close to the heart or in one of the great vessels. Great vessels include aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic vein, internal jugular vein, subclavian vein, external iliac vein, or common femoral vein. The following vascular access catheters are central lines: subclavian vein catheter, internal jugular vein catheter, PICC (peripherally inserted central catheter), Swan-Ganz catheter, Cook, Shiley, Port-a-Cath, Broviac, Groshong, Hickman, or dialysis catheter. The following catheters are not central lines for purposes of this rule: arterial catheters inserted into an artery, midline PICC, and pacemaker wires.

(3) "Central line associated blood stream infection" or "CLA-BSI" means a primary blood stream infection that is associated with the presence of a central line that meets the criteria in Subsection 21(3).

(4) "Common skin commensal" means microorganisms that are commonly found on the skin and often indicate contamination of the blood culture media rather than identification of a pathogenic organism when identified in blood culture tests, and include coagulase negative staphylococci, propionibacterium species, corynebacterium species, diphtheroids, bacillus species, and micrococcus species.

(5) "Health care facility" means a facility or agency licensed pursuant to Utah Code Title 26, Chapter 21.

(6) "Health care worker" means any person employed by a health care facility and who in the usual course of work either enters patient rooms or provides direct patient care. Health care workers may include personnel such as physicians, nurses, nursing assistants, therapists, technicians, emergency medical service personnel, dental personnel, pharmacists, laboratory personnel, dietary, housekeeping, and maintenance personnel.

(7) "Intensive care unit" or "ICU" means any general or specialty unit that provides intensive observation, diagnosis, and therapeutic procedures for patients who are critically ill who are 1 year of age or older. An ICU includes coronary care units, medical intensive care units, medical/surgical intensive care units, surgical intensive care units, trauma intensive care units, neurosurgical intensive care units, burn trauma intensive care units, and pediatric intensive care units that provide care for at least some patients.

(8) "Pathogenic organism" means a microorganism that is not a common skin commensal.

**R386-705-3. Reports.**

(1) All hospitals shall, for all general or specialty care ICU beds, except bone marrow transplant units, newborn or neonatal intensive care units, or nursing areas that provide step-down, intermediate care, or telemetry monitoring only, report:

- (a) the number of central line patient days; and
- (b) each case of CLA-BSI.

(2) Each hospital and each long term care facility shall report its influenza vaccination rates for its healthcare workers.

**R386-705-4. Health Care Associated Infection Report****Methodology.**

The information required by this rule shall be reported to the Utah Department of Health, Bureau of Epidemiology using a form or electronic system approved by the Department. All facilities required to report shall report CLA-BSI quarterly for the January through March quarter by May 15, for the April through June quarter by August 15, for the July through September quarter by November 15, and for the October through December quarter by February 15.

**R386-705-10. Health Care Associated Infection Prevention.**

Each facility required to report under Subsection 3(1) shall implement processes to prevent central line associated blood stream infections.

(1) The processes shall include at least one intervention proven by scientifically valid means to be effective in preventing CLA-BSI. Interventions that have been recommended by an accepted health authority, including the Centers for Disease Control and Prevention, or the federal Hospital Infection Control Practices Advisory Committee, meet this requirement.

(2) The facility shall have a system to monitor that program and shall make information about the program available upon request.

**R386-705-20. Central Line Days.**

(1) Each facility required to report under this rule shall report central line patient days.

(a) The facility shall count the number of patients who were at least one year of age and with a central line in place and resident in the ICU at the time of the count.

(b) The count shall be performed at the same time each day, within 1 hour before or after the target time, during the reporting period.

(c) A patient with two or more central lines in place at the time of the count is counted as one patient with a central line on that day.

(d) The facility shall calculate the sum of the individual daily counts for each day in the reporting period to arrive at the total for the reporting period.

(2) The number of central line days may be estimated based on a valid sampling method.

**R386-705-21. Blood Stream Infection Reports.**

(1) Each facility required to report under this rule shall report each case of CLA-BSI that occurs in each patient who is at least one year of age and who was either:

- (a) in an ICU at the time the CLA-BSI was identified and had been in the ICU for at least 2 days prior to that time; or
- (b) had been in an ICU within 2 days prior to the time the CLA-BSI was identified;

(2) The time the CLA-BSI is identified is the time that the first positive blood culture result used to identify the CLA-BSI was collected from the patient.

(3) A case of CLA-BSI is reportable if meets the criteria in Subsections 22(1), (4), and (5) and does not meet the criteria in Subsection 22(3).

(4) For each case of CLA-BSI, the hospital shall report:

- (a) the date the CLA-BSI was identified;
- (b) the type of ICU in which the case occurred, i.e., the ICU in which the patient resided at identification of the CLA-BSI if in ICU at the time, or the ICU from which patient was most recently discharged if not in ICU at the time;
- (c) the organism or organisms isolated from blood cultures associated with the CLA-BSI episode; and
- (d) whether the CLA-BSI was considered a mixed BSI episode based on meeting the criteria in Subsections 22(2).

(5) The Utah Department of Health shall evaluate the case definitions and reporting algorithm at least annually with input

from the users group and make any needed clarifications or changes.

**R386-705-22. Classification Criteria for Central Line Associated Bloodstream Infections.**

Definitions of bloodstream infections established in this rule are not to be construed as technical medical definitions of bloodstream infections, but only as definitions necessary to establish a reporting requirement. In reporting CLA-BSI under this rule, facilities shall apply the following criteria as required by Section R386-705-21:

(1) Criteria 1-BSI:

(a) at least one blood culture result includes a pathogenic organism;

(b) at least two blood culture results from specimens obtained at different times or from specimens drawn at different phlebotomy sites, e.g., left arm and right arm, within a 2 day period include the same type of common skin commensal organism; or

(c) at least one blood culture result includes a common skin commensal organism and antibiotic treatment effective against that organism was started on the day that the culture was collected and was continued for greater than three days.

(2) Criteria 2-Mixed BSI:

A BSI is a mixed BSI episode if more than one type of organism is identified in blood culture results obtained within a 5 day period.

(3) Criteria 3-Secondary BSI:

(a) A BSI is a secondary BSI if the organism is a pathogenic organism and is detected in a culture from a source other than blood that:

(i) was obtained from the patient within the 3 days before or 7 days after the positive blood culture;

(ii) is not a surveillance culture, i.e., a culture obtained routinely to detect carriage of an organism and not to diagnose an infection that is suspected based on clinical findings;

(iii) is not a culture of a catheter tip; and

(iv) is not a yeast obtained in a culture from respiratory source.

(b) A mixed BSI episode is secondary if any one of the organisms detected in blood cultures during the current episode meets the criteria for a secondary BSI.

(4) Criteria 4-New Episode:

A primary BSI is a new episode of BSI if:

(a) it is the first BSI in the patient during the patient's current hospitalization;

(b) it is the first time this organism is detected in the patient and no other BSI was detected in the patient in the previous 5 days; or

(c) the organism was detected in a previous blood culture from this patient and that blood culture was collected more than 30 days before the blood culture indicating the current BSI episode.

(5) Criteria 5-Central Line:

A BSI is a CLA-BSI if a central line was in place for at least two days before the first blood culture identifying the BSI was collected.

**R386-705-25. Influenza Vaccination Rate Reporting.**

(1) Reports of influenza vaccination rates shall include the number of health care workers and the number of those workers who are documented to have received an influenza vaccine for the current influenza season. Influenza vaccination rates may be measured by complete enumeration of all health care workers in the facility during the season and the number of them who were vaccinated during that season or may be estimated by a cross-sectional assessment.

(2) Each hospital and licensed long term care facility shall report its influenza vaccination rates for the current influenza

season by January 31.

**R386-705-100. Attestation Required.**

Each facility required to report under Subsection 3(1), shall attest to the implementation and effectiveness of its health care infection prevention program and its systems for reporting, as required by this rule, once every three years.

**R386-705-101. Penalties.**

As required by Section 63-46a-3(5): An entity that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: hospitals, quality improvement, patient safety**

**March 15, 2010**

**26-1-30(2)(a)**

**26-1-30(2)(b)**

**26-1-30(2)(d)**

**26-1-30(2)(e)**

**26-1-30(2)(g)**

**26-6-3**

**26-6-7**

**R386. Health, Epidemiology and Laboratory Services, Epidemiology.****R386-800. Immunization Coordination.****R386-800-1. Authority and Purpose.**

(1) This rule is authorized by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

(2) It establishes a system to coordinate immunizations among health care providers to assure adequate immunization and to avoid unnecessary immunizations. It provides for the sharing of immunization information among authorized health care providers, health insurers, schools, day care centers, and publicly funded programs to meet statutory immunization requirements and to control disease outbreaks.

(3) It establishes a requirement allowing individuals to withdraw from the system.

(4) It establishes confidentiality requirements and lists penalties for violations.

**R386-800-2. Participation by Individuals.**

(1) Individual participation in the immunization coordination system is voluntary. Immunization records of individuals in Utah may be included in the system unless the individual or parent or guardian withdraws. An individual or his or her parent or guardian may withdraw from the system at any time.

(2) An individual who has given prior affirmative consent to participate in the system will be included until such time as he or she withdraws from the system.

**R386-800-3. Participation by Organizations.**

(1) Health care providers, health insurers, schools, day care centers, and publicly funded programs can apply to participate in the system. An authorized organizational participant must sign a participation agreement and abide by its requirements.

(2) No person or individual is required to access the system to coordinate immunizations.

**R386-800-4. Notification.**

Organizations that participate in the program shall inform individuals or parents or guardians about the system and provide information about the right to withdraw from of the system as required in the participation agreement. This notice must be provided directly to parents or guardians when issuing birth certificates.

**R386-800-5. Withdrawal.**

(1) The Department of Health shall provide withdrawal forms and contact information to individuals, parents or guardians, and organizational participants.

(2) Organizational participants shall make the forms and contact information available to individuals or their parents or guardians as required by the participation agreement, but are not responsible to assure that the individual is withdrawn from the system.

**R386-800-6. Access and Confidentiality.**

(1) Organizational participants may access identifiable patient information in the system only as required to assure adequate immunization of a patient, to avoid unnecessary immunizations, to confirm compliance with mandatory immunization requirements, and to control disease outbreaks.

(2) All other access is restricted by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

**R386-800-7. Liability.**

(1) Organizational participants report immunization

records to the system under the authority of the Communicable Disease Control Act.

(2) An organizational participant who reports information in good faith pursuant to this rule is not liable for reporting the immunization information to the Department of Health for use in the system.

**R386-800-8. Penalties for Violation.**

As required by Section 63-46a-3(5): Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: immunization data reporting, consent****March 15, 2010****26-3****Notice of Continuation May 24, 2005****26-6**

**R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.**

**R388-804. Special Measures for the Control of Tuberculosis.**

**R388-804-1. Authority and Purpose.**

(1) This rule establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures.

(2) The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis.

**R388-804-2. Definitions.**

(1) The definitions described in Section 26-6b apply to this rule, and in addition:

(a) Tuberculosis. A disease caused by *Mycobacterium tuberculosis* complex, i.e., *Mycobacterium tuberculosis*, *Mycobacterium bovis*, or *Mycobacterium africanum*.

(b) Acid-fast bacilli (AFB). Denotes bacteria that are not decolorized by acid-alcohol after having been stained with dyes such as basic fuchsin; e.g., the *Mycobacterium* and *Nocardia* spp.

(c) Case of tuberculosis. An episode of tuberculosis disease meeting the clinical or laboratory criteria for tuberculosis as defined in the document entitled "Case Definitions for Infectious Conditions Under Public Health Surveillance." The Department incorporates by reference the Centers for Disease Control and Prevention "Case Definitions for Infectious Conditions under Public Health Surveillance," MMWR; 46 (no. RR-10): 40-41, 1997.

(d) Tuberculosis infection. The presence of *M. tuberculosis* in the body but the absence of clinical or radiographic evidence of active disease as documented by a significant tuberculin skin test, a negative chest radiograph and the absence of clinical signs and symptoms.

(e) Tuberculosis disease. A state of infectious or communicable tuberculosis, pulmonary or extra-pulmonary, as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, other diagnostic procedures or physician diagnosis.

(f) Directly observed therapy. A method of treatment in which health-care providers or other designated individuals physically observe the individual ingesting anti-tuberculosis medications.

(g) Drug resistant tuberculosis. Tuberculosis bacteria which is resistant to one or more anti-tuberculosis drug.

(h) Multi-drug resistant tuberculosis. Tuberculosis bacteria which is resistant to at least isoniazid and rifampin.

(i) Suspect case. An individual who is suspected to have tuberculosis disease, e.g., a known contact to an active tuberculosis case or a person with signs and symptoms consistent with tuberculosis.

(j) Program. Utah Department of Health: Bureau of HIV/AIDS, Tuberculosis Control and Refugee Health: Tuberculosis Control/Refugee Health Program.

(k) Department. Utah Department of Health.

**R388-804-3. Required Reporting.**

(1) Tuberculosis is a reportable disease. Individuals shall immediately notify the Department by telephone of all suspect and confirmed cases of pulmonary and extra-pulmonary tuberculosis as required by R386-702-2, R386-702-3.

(2) The report may also be made to the local health department, who shall notify the Department of all suspect and confirmed cases within 72 hours of report.

**R388-804-4. Screening Priorities and Procedures.**

(1) Private physicians and local health departments shall screen individuals considered to be at high risk for tuberculosis disease and infection before screening is conducted in the general population. Priorities shall be established based on those at greatest risk for disease and in consideration of the resources available.

(2) Individuals considered at high risk for tuberculosis include the following:

- (a) Close contacts of those with infectious tuberculosis;
- (b) Persons infected with human immunodeficiency virus;
- (c) Individuals who inject illicit drugs;
- (d) Inmates of adult and youth correctional facilities;
- (e) Residents of nursing homes, mental institutions, other long term residential facilities and homeless shelters;
- (f) Recently arrived foreign-born individuals, within five years, from countries that have a high tuberculosis incidence or prevalence;
- (g) Low income or traditionally under-served groups with poor access to health care, e.g., migrant farm workers and homeless persons;

(h) Individuals who are substance abusers and members of traditionally under-served groups;

(i) Individuals with certain medical conditions that may predispose them to tuberculosis infection and disease, e.g., diabetes, cancer, silicosis, and immune-suppressive disorders;

(j) Individuals who have traveled for extended periods of time in countries that have a high tuberculosis incidence or prevalence;

(k) Other groups may be identified by order of the Department, as needed to protect public health.

(3) Employers who are required to follow Occupational Safety and Health Administration guidelines for the prevention of tuberculosis transmission disease shall develop and implement an employee screening program.

(4) Tuberculosis screening shall be completed using either the Mantoux tuberculin skin test method or an FDA approved in-vitro serologic test.

(a) Screening for tuberculosis with chest radiographs or sputum smears to identify individuals with tuberculosis disease is acceptable in places where the risk of transmission is high and the time required to give the skin test makes the method impractical.

(b) If the skin test yields results indicating tuberculosis exposure, the individual shall be referred for further medical evaluation.

**R388-804-5. Diagnostic Criteria.**

(1) The Department incorporates by reference the American Thoracic Society (ATS/CDC) diagnostic and classification standards as described in the segment entitled "Diagnostic Standards and Classification of Tuberculosis in Adults and Children," published in the American Journal of Respiratory and Critical Care Medicine, Vol 161, pp. 1376-1395, 2000. In diagnosing tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

**R388-804-6. Treatment and Control.**

(1) The Department incorporates by reference the ATS/CDC treatment standards as described in the segment entitled "Centers for Disease Control and Prevention. Treatment of Tuberculosis, American Thoracic Society, CDC, and Infectious Diseases Society of America. MMWR 2003;52 (No. RR-11), Centers for Disease Control and Prevention. Controlling Tuberculosis in the United States: Recommendations from the American Thoracic Society; CDC, and the Infectious Diseases Society of America. MMWR 2005; 54 (No. RR-12)" and "Centers for Disease Control and



Prevention. Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection. MMWR 2000; 49 (No. RR-6)." In treating tuberculosis, health care providers must adhere to the standards listed in this document.

(2) A health-care provider who treats an individual with tuberculosis disease shall use the ATS/CDC treatment standards as a reference for the development of a comprehensive treatment and follow-up plan for each individual. The plan shall be developed in cooperation with the individual and approved by the local health department or the Program. Health-care providers shall routinely document an individuals' adherence to prescribed therapy for tuberculosis infection and disease. If isolation is indicated, the plan for isolation shall be approved by the local health department or the Program.

(3) A health-care provider who treats an individual with tuberculosis disease shall provide for directly observed therapy for individuals diagnosed with active tuberculosis disease.

(4) Individuals with infectious tuberculosis disease shall wear a mask approved by the local health department or the Program when outside the isolation area.

**R388-804-7. Epidemiologic Investigations.**

(1) The local health department shall conduct a contact investigation immediately upon report of an AFB smear positive suspected or confirmed case of tuberculosis disease.

(2) The contact investigation shall include interviewing, counseling, educating, examining and obtaining comprehensive information about those who have been in contact with individuals who have infectious tuberculosis.

(a) The investigation shall begin within three days of notification of an AFB smear positive suspected or confirmed case and the initial evaluation shall be completed within fourteen days of notification.

(b) Investigations of contacts to persons with active TB disease shall include the evaluation of contacts and the treatment of infected contacts.

(c) The local health department shall submit demographic data to the Department at 30 days and at 120 days after initiation of the contact investigation, and following the completion of prophylactic.

**R388-804-8. Payment for Isolation and Quarantine.**

(1) Individuals who are isolated or quarantined at the expense of the Department shall provide the Department with information to determine if any other payment source for the costs associated with isolation or quarantine is available.

**R388-804-9. Penalty for Violation.**

(1) Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: tuberculosis, screening, communicable disease**

March 15, 2010	26-6-4
Notice of Continuation May 29, 2007	26-6-6
	26-6-7
	26-6-8
	26-6-9
	26-6b

**R392. Health, Epidemiology and Laboratory Services, Environmental Services.****R392-100. Food Service Sanitation.****R392-100-1. Authority and Purpose.**

(1) This rule is authorized by Subsections 26-1-30(2), and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

**R392-100-2. Incorporation by Reference.**

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(2) with the following additions or amendments:

(a) Amend section 8-103.10 to read:

8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance.

(b) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times.

(c) Amend Section 8-302.14 (C) to read:

A statement specifying whether the food establishment is mobile or stationary and temporary or permanent.

(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(e) Amend section 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency.

(f) Amend section 8-304.11(J) to read:

Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:

(g) Amend section 8-304.11(K) to read:

Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and

(h) Amend section 8-401.10(A) to read:

(A) Except as specified in paragraphs (B) and (C) of this

section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations.

(i) Amend section 8-501.10(B) to read:

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(j) Add section 8-501.10(C) to read:

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(k) Amend section 8-601.10 to read:

Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions.

(l) Amend section 8-701.30 to read:

Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).

(m) Amend section 8-803.10 to read:

8-803.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption,

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health and

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(n) Amend section 8-803.60 to read:

The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11.

(o) Amend section 8-803.90 to read:

The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated.

(p) Amend section 8-804.30 number/catchline to read:

8-804.30 Contents of the Summary Suspension Notice.

(q) Amend section 8-805.10(A) to read:

(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties.

(r) Amend section 8-805.20 to read:

A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if

witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any.

(s) Amend section 8-805.50(A)(1) to read:

(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

(t) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(v) Amend subsection 8-805.50(A)(2) to read:

(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority.

(v) Amend section 8-805.60 number/catchline to read:

8-805.60 Notice of Hearing Contents.

(w) Amend section 8-805.80 number/catchline to read:

8-805.80 Expedient and Impartial Hearing.

(x) Amend section 8-805.90 number/catchline to read:

8-805.90 Confidentiality of Hearing and Proceedings.

(y) Amend section 8-805.90(A) to read:

(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law.

(z) Amend section 8-806.30(B) to read:

(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer

(aa) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(ab) Amend section 8-807.60 to read:

Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer.

(ac) Amend section 8-808.20 to read:

Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.

(ad) Amend section 8-811.10(B) to read:

(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6.

(ae) Amend section 8-813.10 number/catchline to read:

8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.

(af) Amend section 8-813.10(B) to replace the phrase (designate amount) with the phrase \$5,000.

(ag) Add paragraph 8-813.10(D) to read:

(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order.

(3) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-56-701(1)(c), and R156-56-803 are adopted and incorporated by reference.

**KEY: public health, food services, sanitation**

**March 15, 2010**

**Notice of Continuation March 22, 2007**

**26-1-30(2)**

**26-15-2**

**R392. Health, Epidemiology and Laboratory Services, Environmental Services.****R392-101. Food Safety Manager Certification.****R392-101-1. Authority and Purpose of Rule.**

This rule is authorized by Section 26-15a-103 for the purposes of establishing statewide uniform standards for certified food safety managers and implementing the Food Safety Manager Certification Act.

**R392-101-2. Definitions.**

(1) As used in Title 26, Chapter 15a, and in this rule:

(a) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.

(b) Continental breakfast means a breakfast meal restricted to:

- (i) Beverages such as coffee, tea, and fruit juices;
- (ii) Pasteurized Grade A milk;
- (iii) Fresh fruits;
- (iv) Frozen and commercially processed and prepackaged fruits;
- (v) Commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;
- (vi) Cereals;
- (vii) Commercially prepackaged jams, jellies, honey, and syrup;
- (viii) Pasteurized Grade A creams and butters, non-dairy creamers, or similar products;
- (ix) Commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and
- (x) foods served with single-use articles.
- (xi) Single-use article means a utensil designed and constructed to be used once and discarded.
- (xii) Heat and serve foods are precooked by the manufacturer and do not require cooking to critical temperatures as required by R392-100, but only require heating to meet the customer's satisfaction.

**R392-101-3. Certification and Recertification Examination Content.**

Certification and recertification examinations shall require the examinee to demonstrate knowledge in food protection management in the following areas:

- (1) Identify foodborne illness.
  - (a) Define terms associated with foodborne illness.
    - (i) foodborne illness
    - (ii) foodborne outbreak
    - (iii) foodborne infection
    - (iv) foodborne intoxication
    - (v) diseases communicated by food
    - (vi) foodborne pathogens
  - (b) Recognize the major organisms and toxins that can contaminate food and the problems that can be associated with the contamination.
    - (i) bacteria
    - (ii) viruses
    - (iii) parasites
    - (iv) fungi
  - (c) Define and recognize potentially hazardous foods.
  - (d) Define and recognize chemical and physical contamination and illnesses that can be associated with chemical and physical contamination.
  - (e) Define and recognize the major contributing factors for foodborne illness.
  - (f) Recognize how microorganisms cause foodborne disease.
- (2) Identify time/temperature relationship with foodborne

illness.

(a) Recognize the relationship between time/temperature and microorganisms survival, growth, and toxin production during the following stages:

- (i) receiving
- (ii) storing
- (iii) thawing
- (iv) cooking
- (v) holding/displaying
- (vi) serving
- (vii) cooling
- (ix) storing or post production
- (x) reheating
- (xi) transporting
- (b) Describe the use of thermometers in monitoring food temperatures.

(i) types of thermometers

(ii) techniques and frequency

(iii) calibration and frequency

(3) Describe the relationship between personal hygiene and food safety.

(a) Recognize the association between hand contact and foodborne illness.

- (i) hand washing technique and frequency
- (ii) proper use of gloves, including replacement frequency
- (iii) minimal hand contact with food
- (b) Recognize the association of personal habits and behaviors and foodborne illness.

(i) smoking

(ii) eating and drinking

(iii) wearing clothing that may contaminate food

(iv) personal behaviors, including sneezing, coughing and scratching.

(c) Recognize the association of health of a foodhandler to foodborne disease

- (i) free of symptoms of communicable disease
- (ii) free of infections spread through food on contact
- (iii) food protected from contact with open wounds
- (d) Recognize how policies, procedures and management contribute to improved hygiene practices.

(4) Describe methods for preventing food contamination from purchasing to serving.

- (a) Define terms associated with contamination:
  - (i) contamination
  - (ii) adulteration
  - (iii) damage
  - (iv) approved source
  - (v) sound and safe condition
- (b) Identify potential hazards prior to delivery and during delivery.

(i) approved source

(ii) sound and safe condition

(c) Identify potential hazards and methods to minimize or eliminate hazards after delivery:

- (i) personal hygiene
- (ii) cross contamination from food to food
- (iii) cross contamination between equipment and utensils
- (iv) contamination from chemicals
- (v) contamination from additives
- (vi) physical contamination
- (vii) contamination during service and display
- (viii) contamination from customers
- (ix) storage
- (x) re-service

(5) Identify correct procedures for cleaning and sanitizing equipment and utensils:

- (a) Define terms associated with cleaning and sanitizing.
  - (i) cleaning
  - (ii) sanitizing

- (b) Apply principles of cleaning and sanitizing
- (c) Identify materials: equipment, detergent and sanitizer
- (d) Identify appropriate methods of cleaning and sanitizing.
  - (i) manual dishwashing
  - (ii) mechanical dishwashing
  - (iii) clean-in-place
- (e) Identify frequency of cleaning and sanitizing
- (6) Recognize problems and potential solutions associated with facility, equipment and layout.
  - (a) Identify facility, design and construction suitable for food establishments:
    - (i) refrigeration
    - (ii) heating and hot-holding
    - (iii) floors, walls and ceilings
    - (iv) pest control
    - (v) lighting
    - (vi) plumbing
    - (vii) ventilation
    - (viii) water supply
    - (ix) wastewater disposal
    - (x) waste disposal
  - (b) Identify equipment and utensil design and location
- (7) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance:
  - (a) by self inspection program.
  - (b) by pest control program.
  - (c) by cleaning schedules and procedures.
  - (d) by equipment and facility maintenance program.

#### **R392-101-4. Food Safety Manager Certification Courses.**

- (1) For the purposes of Section 26-15a-104(2)(b), a course approved by the Department shall be designed for a specific approved examination in R392-101-5(4) as determined by that examination's developer.
- (2) The course developer shall certify the instructor.
- (3) The Department shall approve the course for 3 years.

#### **R392-101-5. Test Approval.**

- (1) A person seeking approval of an examination shall provide the following background information to the Department:
  - (a) The person's name, address, telephone number and contact person.
  - (b) A description of the usage of the examination including the time period in use, number of examinations already administered, and any government or other agencies already approving the examination.
  - (c) A copy of the examination's pool of questions. Each question shall be:
    - (i) Cross-referenced to the corresponding content area in R392-101-3, and
    - (ii) Documented with the correct answer and the source from which the correct answer was determined.
  - (d) A sample copy of the official certificate issued to persons who pass the examination.
- (2) An examination must meet the following requirements in order to be approved:
  - (a) It must contain at least 50 multiple choice questions, drawn from a pool of at least three times the number of questions given in the examination.
  - (b) All questions shall be multiple choice with 4 choices.
  - (c) At least 85% of the questions must be in the content categories of R392-101-3 and shall be apportioned to them as follows:
    - (i) Identify foodborne illness shall constitute 6-20% percent of the total examination questions,
    - (ii) Identify time/temperature relationship with foodborne

illness shall constitute 6-20% percent of the total examination questions,

- (iii) Describe the relationship between personal hygiene and food safety shall constitute 6-20% percent of the total examination questions,
- (iv) Describe methods for preventing food contamination from purchasing to serving shall constitute 6-20% percent of the total examination questions,
- (v) Identify correct procedures for cleaning and sanitizing equipment and utensils shall constitute 6-20% percent of the total examination questions,
- (vi) Recognize problems and potential solutions associated with facility, equipment and layout shall constitute 6-20% percent of the total examination questions,
- (vii) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance shall constitute 6-20% percent of the total examination questions.
- (d) The person seeking approval shall demonstrate that the same version of the examination will not be used more than 6 months and that at least 10% of the questions will be randomly selected and changed between versions.
- (e) The person seeking approval shall demonstrate that a system for updating the pool of questions at least every three years is in place.
- (f) The examination questions must be grammatically correct and contain no misspellings.
- (g) The distractors must be relevant to the examination question and represent a plausible alternative.

(3) The Department shall review the materials submitted by an applicant in R392-101-5(1) and (2). The Department shall approve examinations that meet the requirements. If an examination is approved the Department shall notify the examination developer of the approval in writing. If the Department does not approve an examination, it shall notify the examination developer in writing of the reasons why.

- (4) The Department shall maintain a current list of approved examinations.
- (5) A person may not represent an examination as Department of Health approved, or other similar language, if the examination is not listed according to R392-101-5(4).

#### **R392-101-6. Test Administration.**

- (1) Test administrators shall:
  - (a) Provide monitors and security at the locations where the examination is administered.
  - (b) Maintain a tracking system for all examinations to protect them against theft.
  - (c) Provide locations and dates of all examinations administered by the testing organization upon request of the Department.
  - (d) Provide necessary staff to administer, monitor and grade examinations.
  - (e) Maintain records of each candidate's name, home address, social security number, pass/fail status, date of examination, and name of instructor for at least three years.
  - (f) Provide accommodation for examinees who do not speak English and who wish to take the test.
- (2) The test administrator shall assure there is at least one monitor for every 40 students taking the examination.
- (3) The monitor shall confirm the identity of the individual who wishes to take the examination by photographic identification, driver's license or student identification card. The individual shall provide a legal document bearing his signature to the monitor if he does not have a photographic identification card.
- (4) The test administrator shall provide test security measures which protect the test from compromise in preparation, printing and transportation to the site, as follows:

(a) The examination materials are stored and administered under secure conditions, where access to the examination is limited to the monitor and test administrator.

(b) The examination materials are inventoried prior to and immediately following each administration of the examination.

(c) The examination materials are available to the candidate during the examination administration only.

(5) The test administrator may not certify an individual determined to have cheated on the examination.

(6) The test administrator may not administer an examination which has been compromised.

**R392-101-7. Certification and Recertification Requirements.**

(1) A person must answer at least 70% of the questions correctly on a Department- approved examination to pass the examination; except that the examination developer may set the passing score for an examination that it demonstrates to have been developed in accordance with the Standards For Educational And Psychological Testing published by the American Psychological Association.

(a) The examination developer must submit documentation to the Department supporting its claim.

(b) The Department shall review the documentation and determine the validity of the claim.

(2) A person who successfully passes a Department- approved examination must provide documentation of that to the local health officer within sixty days of receipt of the documentation to be certified as a food safety manager. A photocopy of the documentation is acceptable. If a certified food safety manager commences work in a different local health jurisdiction he shall notify the local health officer in that jurisdiction.

(3) A person who completes the requirement in R392-101-7(2) shall be considered to be certified as a food safety manager throughout Utah.

(4) Food safety manager certifications are effective for three years from the date the applicant receives documentation of a passing score from the testing organization.

(5) A food service establishment must maintain a copy of its certified food safety manager's documentation of a passing score on a Department- approved examination on file at the establishment. The food service establishment's person in charge must provide this documentation to the local health officer or his designated representative upon request.

(6) To recertify, a certified food safety manager must submit documentation to the appropriate local health department indicating a passing score on a Department- approved examination within the previous six months.

(7) A person certified as a food safety manager is exempt from state or local requirements for food handlers as defined in Section 26-15-1(1) Utah Code.

**R392-101-8. Exempt Establishments.**

A local health officer shall exempt a food service establishment from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment:

(1) is classified within the lowest risk category for a local health department utilizing a risk-based assessment system; or

(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:

(a) cook foods that are required to reach critical temperatures as required by R392-100;

(b) use foods that are required to be cooled within a 6 hour time period as required by R392-100; or

(c) use foods that must be reheated to 165 degrees as

required by R392-100.

**R392-101-9. Penalties.**

Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: public health, food service**

**March 15, 2010**

**Notice of Continuation February 12, 2009**

**26-15a-103**

**R392. Health, Epidemiology and Laboratory Services, Environmental Services.****R392-400. Temporary Mass Gatherings Sanitation.****R392-400-1. Authority.**

This rule is authorized under Utah Code Section 26-15-2.

**R392-400-2. Purpose.**

It is the purpose of this rule:

- (1) to protect, preserve and promote the physical health of the public;
- (2) to prevent and control the incidence of communicable diseases;
- (3) to reduce hazards to health and environment;
- (4) to maintain adequate sanitation and public health;
- (5) to protect the safety of the public; and
- (6) to promote the general welfare.

**R392-400-3. Definitions.**

(1) "Department" means the Utah Department of Health (UDOH).

(2) "Director" means the executive director of the Utah Department of Health or the executive director's designee.

(3) "Drinking Water Station" means a location where a person may obtain safe drinking water free of charge.

(4) "First Aid Station" means a temporary or permanent enclosed space or structure where a person can receive first aid and emergency medical care.

(5) "Health Officer" means the director of the local health department having jurisdiction or the health officer's designee.

(6) "Operator" means a person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of a temporary mass gathering.

(7) "Owner" means any person who alone, jointly, or severally with others:

(a) has legal title to any premises, with or without accompanying actual possession thereof or;

(b) has charge, care, or control of any premises, as legal or equitable owner, agent of the owner, or lessee.

(8) "Permit" means a written form of authorization written in accordance with this rule.

(9) "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.

(10) "Safe Drinking Water" means potable water meeting State safe drinking water rules or bottled water as regulated by the Utah Department of Agriculture and Food.

(11) "Safe Drinking Water System" means a system for delivering safe drinking water that is approved by the local health officer.

(12) "Solid Waste" means garbage, refuse, trash, rubbish, hazardous waste, dead animals, sludge, liquid or semi liquid waste, other spent, useless, worthless, or discarded materials or materials stored or accumulated for the purpose of discarding, materials that have served their original intended purpose.

(13) "Staff" means any person who:

(a) works for or provides services for or on behalf of the operator or a vendor, or

(b) is a vendor at a gathering.

(14) "Temporary Mass Gathering" or "Gathering" means an actual or reasonably anticipated assembly of 500 or more people, which continues or can reasonably be expected to continue for two or more hours per day, at a site for a purpose different from the designed use and usual type of occupancy. A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are

exceeded.

(15) "Vendor" means any person who sells or offers food for public consumption.

(16) "Wastewater" means used water or water carried wastes produced by man, animal, or fowl.

**R392-400-4. Permit To Operate Required.**

(1) A person may not operate a temporary mass gathering without a valid written permit issued by the health officer.

(2) The health officer may exempt a parade from the permit requirement if the operator submits an application as required in Section R392-400-6 and the health officer determines that the availability of existing public sanitary facilities, drinking water and trash containers is sufficient to protect public health.

(3) A temporary mass gathering may not exceed 30 days unless otherwise approved by the health officer.

**R392-400-5. Gathering Operator Required On Site.**

(1) The operator shall establish a headquarters at the gathering site.

(2) The operator or the operator's designee shall be present at the gathering at all times during operating hours.

**R392-400-6. Permit Application Required.**

(1) The health officer shall prescribe the application process, and shall require the applicant to submit an application at least 15 days prior to the first advertisement of the gathering and at least 30 days prior to the first day of the gathering. The health officer may grant an exception to this requirement on a case by case basis because of the nature of the event, scarcity of problems associated with the event in the past or other public health related criteria.

(2) An application for a permit shall be in writing to the health officer and include the following information:

(a) name, address, telephone number, and fax number (if applicable) of the operator;

(b) number of people expected to attend the gathering;

(c) a description of the type of gathering to be held with the date(s) and times the gathering will be held;

(d) estimated length of stay of attendees;

(e) name, address, telephone number, and fax number (if applicable) of property owner;

(f) location of the gathering and a site plan delineating the area where the gathering is to be held including the following:

(i) the parking area available for patrons;

(ii) location of entrance, exit, and interior roadways and walks;

(iii) location, type, and provider of restroom facilities;

(iv) location and description of water stations;

(v) location and number of food stands, and the types of food to be served if known;

(vi) location, number, type, and provider of solid waste containers;

(vii) location of operator's headquarters at the gathering;

(viii) a plan to provide lighting adequate to ensure the comfort and safety of attendees and staff;

(ix) location of all parking areas designated for the gathering and under the operator's control.

(g) the name of the solid and liquid waste haulers with whom the operator has contracted, unless exempted by this rule;

(h) a site clean up plan after the gathering;

(i) total number, and qualifications of first aid station personnel;

(j) plan for directional and exit signs;

(k) a plan developed by the operator to address nuisances or health hazards associated with animals present at the gathering;

(l) plans to address hazardous conditions as required in

Section R392-400-13;

(m) emergency medical services operational plan approved by the local licensed emergency medical services agency director, including the location of all first aid stations and emergency medical resources;

(n) any other information specifically requested by the health officer as necessary to protect public health.

(3) The health officer shall require a separate application for each temporary mass gathering.

(4) The health officer shall consider the proximity and risk of known health hazards when determining the acceptability of a proposed gathering site.

#### **R392-400-7. Permit.**

(1) The health officer may attach conditions or grant waivers to a permit, in accordance with this rule, in order to meet specific public health and safety concerns.

(2) The health officer may deny a permit for any of the following reasons:

(a) failure of the applicant to show that the gathering will be held or operated in accordance with the requirements and standards of this rule;

(b) submission of incorrect, incomplete, or false information in the application ;

(c) the gathering will be in violation of law.

(3) The health officer shall return a denied permit application to the applicant within 5 working days of submission, specifying the basis for denial in writing.

(4) The applicant may appeal a denied permit in accordance with the procedures established by the local Board of Health.

#### **R392-400-8. Inspections.**

(1) The director and health officer may conduct inspections before, during, and after a gathering to ensure compliance with R392-400 and approved plans.

(2) The operator shall provide the director and health officer with access to all areas of the gathering that the director and health officer deem necessary and the number of access credentials they request.

(3) The operator shall effectively communicate the director's and health officer's access privileges to staff.

#### **R392-400-9. Notice Of Violation Or Closing.**

(1) The health officer may issue a notice of violation to the owner, operator or the operator's designee if the gathering fails to meet the requirements of this rule or the conditions of the permit.

(2) The health officer shall, in accordance with R392-100 Food Service Sanitation, direct the disposition of any food items, including ice and water, that have been adulterated or are otherwise unfit for human consumption.

(3) The health officer may issue a notice of closure of the gathering or part thereof to the owner, operator or the operator's designee if the health officer determines that conditions at the gathering constitute a serious or imminent health hazard.

(4) No gathering site or part thereof that has been closed may be used for a gathering until the department or health officer determines that the conditions causing the closure have been abated and written approval is received from the department or health officer. The director or health officer shall remove the posted notice whenever the violation(s) upon which closing, and posting were based has been remedied.

(5) No unauthorized person may deface or remove a posted notice from any gathering site that has been closed by the director or local health officer.

(6) The operator may appeal a notice or closure in accordance with the procedures established by the local Board of Health or the Utah Administrative Procedures Act, whichever

is applicable.

#### **R392-400-10. Solid Waste Management.**

(1) The operator shall contract with a solid waste hauler approved by health officer. The operator is exempt from this requirement if the operator is approved by the health officer as a solid waste hauler and is identified as the solid waste hauler for the gathering. The health officer shall establish written criteria for approving a solid waste hauler.

(2) The operator shall provide and strategically locate a sufficient number of covered waste containers approved by the health officer to effectively accommodate the solid waste generated at the gathering.

(3) The operator shall ensure that the waste containers are emptied as often as necessary to prevent overflowing, littering, or insect or rodent infestation.

(4) The operator shall ensure that solid waste and litter are cleaned from the property periodically during the gathering and that, within 24 hours following the gathering, the property is free of solid waste and is clean. On a case by case basis, the health officer may allow for more than 24 hours to clean up the site because of the time of year, nature of the event or other extenuating circumstances if the health officer is satisfied that the extension will not adversely affect the public health

(5) The operator shall ensure that litter is prevented from being blown from the gathering site onto adjacent properties.

(6) The operator shall ensure that all solid waste is collected and disposed of at a solid waste disposal or recycling facility meeting State and local solid waste disposal facility requirements.

(7) The operator, staff, participants, and spectators shall comply with all applicable State and local requirements for solid waste management.

#### **R392-400-11. Site Maintenance.**

(1) All buildings or structures provided for the gathering shall be maintained in a safe, clean condition, in good repair, and in compliance with all applicable laws.

(2) A gathering that provides overnight parking for occupied recreational vehicles in connection with the gathering, shall comply with R392-301 Recreational Vehicle Park Sanitation and local recreational vehicle parks regulations.

(3) The operator shall eliminate any infestation of vermin within any part of a structure intended for occupancy, food storage, or restroom facilities prior to, during, and immediately following a gathering.

(4) The operator is responsible for the maintenance and sanitary condition of the gathering site and facilities. The operator shall prevent the occurrence of any nuisance and immediately take steps to cause the abatement of any nuisance or insanitary condition that may develop.

(5) A gathering site shall be constructed to provide surface drainage adequate to prevent flooding of the gathering site and to prevent water related nuisances on adjacent properties.

(6) Sufficient signs shall identify and show the location of first aid, restroom and drinking water facilities so spectators and participants can readily find them from any place on the gathering site.

(7) The operator shall provide lighting adequate to ensure the comfort and safety of attendees.

(8) All parking areas used for the gathering and under the control of the gathering operator must meet the requirements of this rule.

#### **R392-400-12. Emergency Medical Care Requirements.**

(1) The operator shall ensure that the gathering has at least one first aid station. The health officer or local licensed emergency medical services agency director(s) may require more than one first aid station as they deem necessary because



of the nature of the event, time of year, risk of injuries or other public health and safety needs.

(2) First aid stations shall contain the following minimum equipment and maintain the minimum levels over the duration of the gathering:

- (a) 1 Bag mask ventilation unit with adult, child, and infant mask sizes
- (b) 3 Oropharyngeal airways, adult, child, and infant sizes
- (c) 1 Pocket mask
- (d) 1 portable oxygen apparatus (tank, regulator, case)
- (e) 1 Oxygen extension tubing
- (f) 2 adult and 1 child nasal cannula
- (g) 2 adult and 1 child non-rebreather mask
- (h) 1 adult and 1 child blood pressure cuff
- (i) 1 stethoscope
- (j) 2 pillows
- (k) 2 emesis basins
- (l) 4 blankets
- (m) 4 sheets
- (n) 12 towels
- (o) six 5x9 or 8x10 trauma dressings
- (p) thirty 4x4 gauze dressings
- (q) 12 kerlix or other roller bandage
- (r) 3 roles of adhesive tape
- (s) 3 cervical collars, 1 regular, 1 no-neck, one pediatric
- (t) 1 back board with straps
- (u) 6 non-traction extremity splints (e.g., cardboard, ladder, SAM splints, air splints)
- (v) 10 triangular bandages
- (w) 2 pair of shears
- (x) 1 obstetrical kit
- (y) 2 pen lights
- (z) 100 assorted bandaids
- (aa) 1 traction splint
- (bb) 2 tubes of oral glucose
- (cc) 1 box of exam gloves
- (dd) 4 biohazard bags
- (ee) 1 portable suction device
- (ff) 1 basic life support jump kit for every 2 gathering medical providers

(gg) 1 automatic external defibrillator

(hh) 1 examination table, cot or bed.

(3) First aid stations shall afford privacy to a person receiving care or treatment.

(4) First aid stations shall be of sufficient size to accommodate the number of care givers required, and the predicted number of sick or injured persons.

(5) First aid stations shall be strategically located to provide expedient medical care for those attending or participating in the gathering.

(6) First aid stations shall be easily accessible by emergency vehicles. The operator shall provide the local licensed emergency medical services director(s) a map of the gathering site which includes location of first aid stations, emergency vehicle ingress and egress routes, landing zones (if applicable) and rendezvous locations.

(7) A first aid station shall be clearly marked and identifiable as a first aid station.

(8) At least two state-licensed or certified medical providers, such as an emergency medical technician, paramedic, nurse, physician's assistant or medical doctor shall be present to staff each first aid station. A gathering having more than 2,500 attendees shall have at least two additional emergency medical providers for each additional 5,000 attendees or fraction thereof. The health officer or local licensed emergency medical services agency director(s) may require additional emergency medical services personnel as deemed necessary because of the nature of the event, time of year, risk of injuries or other public health and safety needs.

(9) First aid stations shall be staffed by individuals meeting the following minimum requirements:

(a) is at least 18 years of age;

(b) has a current state license or certification showing competency to be an emergency medical technician, paramedic, nurse, physician's assistant or physician.

(10) The operator shall ensure that the medical staff have access to telephones or radios to contact outside emergency medical. The operator shall provide the local licensed emergency medical services director(s) the telephone numbers and radio frequencies for accessing the gathering medical providers.

(11) The local health officer or local licensed emergency medical services agency director may require the operator to provide dedicated stand-by ambulances and personnel at the gathering. The operator will be financially responsible for the costs of funding dedicated stand-by ambulances and personnel, but not for the costs of providing transportation services to individual patients.

(12) The operator shall ensure that the staff person in charge of the first aid station keeps accurate records of patients and treatment, and that the health officer is notified of all cases involving a serious injury or communicable disease in accordance with R386-702 Communicable Disease Rule and R386-703 Injury Reporting Rule.

(13) The operator shall ensure that the staff person in charge of the first aid station completes a Department approved pre-hospital care form showing all assistance given each person attended and that these forms are submitted to the Department within 72 hours following the gathering.

#### **R392-400-13. Hazardous Conditions.**

The operator shall develop contingency plans for dangerous conditions during the gathering. The plans may include evacuation, cancellation or delay of the gathering and provision for support facilities.

#### **R392-400-14. Food Protection.**

(1) The operator and vendors shall comply with R392-100 Food Service Sanitation.

(2) The operator shall assure that food vendors obtain required food service operating permits from the health officer.

#### **R392-400-15. Safe Drinking Water Supply Requirements.**

(1) The operator shall ensure that all drinking water is from a state-approved safe drinking water supply or bottled water approved by the Utah Department of Agriculture and Food.

(2) Safe drinking water hauled to the gathering shall be hauled and dispensed in a manner that protects public health as determined by the health officer.

(3) The operator shall provide and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff. At least four drinking water stations are required. An additional drinking water station is required for each additional 150 attendees or fraction thereof, above 500 persons. The health officer may reduce the number of additional drinking water stations or require more than one drinking water station for each additional 150 attendees or fraction thereof above 500 persons because of the time of year, heat index, nature of the event or other public health related criteria. If containers are needed to drink the water at the required drinking water stations, the operator must provide single use containers.

#### **R392-400-16. Wastewater Disposal Requirements.**

(1) All wastewater shall discharge to a public wastewater treatment system unless no such system is available or practical for use as determined by the health officer.

(2) Where a public sewer is not available or practical for connection, wastewater shall discharge into a wastewater treatment system approved in accordance with State and local wastewater rules.

(3) The health officer may allow portable restroom facilities and wastewater holding tanks only where an approved sewer system is not available or practical for connection.

(4) The number of toilets and facilities shall be provided in accordance with the following Table.

TABLE  
Minimum Numbers of Toilets Required

Average Time at Gathering (hours)

Peak Crowd	1	2	3	4	5
500	2	4	4	5	6
1000	4	6	8	8	9
2000	5	6	9	12	14
3000	6	9	12	16	20
4000	8	13	16	22	25
5000	12	15	20	25	31
6000	12	15	23	30	38
7000	12	18	26	35	44
8000	12	20	30	40	50
10000	15	25	38	50	63
12500	18	31	47	63	78
15000	20	38	56	75	94
17500	22	44	66	88	109
20000	25	50	75	100	125
25000	38	69	99	130	160
30000	46	82	119	156	192
35000	53	96	139	181	224
40000	61	109	158	207	256
45000	68	123	178	233	288
50000	76	137	198	259	320
55000	83	150	217	285	352
60000	91	164	237	311	384
65000	98	177	257	336	416
each additional					
10,000	15	25	38	50	63

(table continued for 6-10 hours)

	6	7	8	9	10
500	7	9	9	10	12
1000	9	11	12	13	13
2000	16	18	20	23	25
3000	24	26	30	34	38
4000	30	35	40	45	50
5000	38	44	50	56	63
6000	45	53	60	68	75
7000	53	61	70	79	88
8000	60	70	80	90	100
10000	75	88	100	113	125
12500	94	109	125	141	156
15000	113	131	150	169	188
17500	131	153	175	197	219
20000	150	175	200	225	250
25000	191	221	252	282	313
30000	229	266	302	339	376
35000	267	310	352	395	438
40000	305	354	403	452	501
45000	343	398	453	508	563
50000	381	442	503	564	626
55000	419	486	554	621	688
60000	457	531	604	677	751
65000	495	575	654	734	813
each additional					
10,000	75	88	100	113	125

(a) If alcoholic beverages are consumed at the gathering, the operator shall increase the number of required toilets by 40%.

(b) For one year following the effective date of this rule the health officer may allow portable multi-urinal stations to substitute for up to 1/3 of the estimated men's portion of the required toilets.

(c) The operator shall provide a minimum of one toilet that is accessible by handicapped persons and at a rate of 5% of total toilets.

(d) Toilet facilities for men and women located in the same building and adjacent to each other shall be separated by an opaque, sound resistant wall. Direct line of sight from outside a toilet facility to the toilets and urinals shall be effectively obstructed.

(e) The operator shall locate portable toilets a minimum of 100 feet from any food service operation and not more than 300 feet from grand stand or spectator or from other areas of activity which pertain to the gathering, as outlined in the permit application. Where site conditions limit the placement of portable toilets, the health officer may allow exemptions to these distances.

(f) The operator shall provide working hand wash stations at a minimum rate of one per 10 portable toilets or portion thereof. The operator shall provide soap, water and single use towels at each hand wash station. Where conditions make the use of soap and water impractical, the health officer may allow sanitizing gel in place of soap and water. Sanitizing gel may not be used in place of soap and water at hand wash stations used by food service workers.

(g) The operator shall provide a minimum of one covered trash container for every 10 portable toilets or portion thereof.

(h) The operator or coordinator shall ensure that all portable toilets are of sound construction (such as non-absorbent polyethylene), easily cleanable, and durable.

(i) The tank capacity of each portable toilet shall not be less than 60 gallons. Chemicals used for sanitizing agents in portable toilets must be acceptable for use by the treatment facility accepting the sewage.

(j) Each portable toilet must be secured against vandalism and adverse weather conditions by tie downs, anchors or similar effective means.

(k) The operator shall contract with a liquid waste hauler that meets local health department requirements. The operator is exempt from this requirement if the operator is approved by the health officer as a liquid waste hauler and is identified as the liquid waste hauler for the gathering.

(i) the operator shall require in the contract with the liquid waste hauler that the hauler shall meet the requirements of this Subsection.

(ii) the liquid waste hauler shall have a written contract with a wastewater treatment facility indicating that the wastewater treatment facility will accept the wastewater.

(iii) the liquid waste hauler must manifest all disposal of liquid waste materials. The liquid waste hauler shall present the manifest to the health officer for the health officer's review upon request.

(l) The operator shall ensure that all wastewater is removed from each portable toilet at least once every 24 hours. On a case by case basis, the health officer may change this frequency because of the time of year, weather conditions, nature of the event or other public health related criteria. All wastewater removed shall be disposed of at a wastewater treatment facility in accordance with State and local wastewater disposal laws.

(m) Each portable toilet must be serviced and sanitized at time intervals that will maintain sanitary conditions of each toilet.

(n) At the conclusion of the gathering, each portable restroom unit must be serviced and removed within 48 hours. The health officer may extend or shorten this time because of the time of year, weather conditions, the nature of the event or to meet other public health needs.

**R392-400-17. Penalty.**

(1) Any person who violates any provision of this rule

may be assessed a penalty as provided in Subsection 26-23-6.

(2) Each day such violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for all expenses incurred by the department and local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

**R392-400-18. Severability.**

If a provision, clause, sentence, or paragraph of this rule or the application thereof to any person or circumstances shall be ruled invalid, such ruling shall not affect the other provisions or applications of this rule, and to this end the provisions of this rule are severable.

**KEY: public health, temporary mass gatherings, special events**

**March 15, 2010**

**26-15-2**

**Notice of Continuation May 8, 2007**

**R392. Health, Epidemiology and Laboratory Services, Environmental Services.****R392-700. Indoor Tanning Bed Sanitation.****R392-700-1. Authority and Purpose.**

This rule establishes tanning facility standards. It is authorized by Section 26-15-2 and 26-15-13.

**R392-700-2. Applicability.**

This rule applies to places where consideration is given in exchange for access to a tanning device. This rule does not apply to private, non-commercial use of tanning equipment exclusively for non-commercial use.

**R392-700-3. Definitions.**

As used in this rule:

- (1) "Department" means the Utah Department of Health.
- (2) "Operator" means any person who owns, leases, or manages a business operating a tanning facility.
- (3) "Patron" means any person who enters a tanning facility with the intent to use a tanning device.
- (4) "Phototherapy Device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease when used at the health care professional's health care office or clinic.
- (5)(a) "Tanning device" means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers used for tanning of the skin, including:
  - (i) a sunlamp; and
  - (ii) a tanning booth or bed.
- (b) "Tanning device" does not include a phototherapy device.
- (6) "Tanning Facility" means any commercial location, place, area, structure, or business that provides an individual access to a tanning device for the purpose of tanning the individual's skin while in the facility.
- (7) "Timing Device" means a device that is capable of ending the emission of ultraviolet radiation from tanning device after a preset period of time.
- (8) "Ultraviolet Radiation" means electromagnetic radiation that has a wave length interval of 200 nanometers to 400 nanometers in air.

**R392-700-4. Warning Sign Placement.**

(1) The operator of a tanning facility shall post a warning sign that meets the requirements of this rule in a conspicuous location that is readily visible to a person about to use a tanning device.

(a) The operator shall place the warning sign so that all patrons are alerted to the hazard and informed before being exposed to UV radiation. At a minimum, the operator shall post the warning sign:

- (i) in the line of sight of a person presenting at the reception or sales counter and no more than 10 feet from where a patron checks in or pays for the tanning session; and
- (ii) on a vertical surface in the reception area so that the top border of the writing is between five and six feet above the patron floor level at the reception or sales counter area.

**R392-700-5. Warning Sign Requirements.**

(1) The warning sign required by R392-700-5 shall meet the requirements of this section. An Adobe Acrobat Portable Document Format, .pdf, file that meets the requirements of this section is available from the Department or the local health department.

(2) The sign shall be in a landscape format 11 inches high by 17 inches wide on a white background.

(3) All lettering shall be in Arial font as produced in Adobe Acrobat. In addition, the letters shall be:

- (a) black in color

(b) all uppercase

(c) adequately spaced and not crowded

(4) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(a) be 3.3 centimeters, high and 42 centimeters wide, including a black line border that is 0.16 centimeter wide surrounding the safety orange background;

(b) have the word "WARNING" in capital letters that are 80 points in size (approximately two centimeters high); and

(c) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING"

(5) The safety alert symbol shall be black with a yellow field.

(6) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(7) Immediately below the orange panel shall appear the words: "ULTRAVIOLET RADIATION" in letters that are 61 points in size (approximately 1.5 centimeters high) and centered between the vertical margins. The vertical space between the "WARNING" panel and the top of the words "ULTRAVIOLET RADIATION" shall be approximately 1.6 centimeters. The vertical space between the bottom of the words "ULTRAVIOLET RADIATION" and the top of the words of the first bulleted statement required in subsection (9) shall be approximately 1.6 centimeters.

(8) Beneath the "ULTRAVIOLET RADIATION" line shall appear the body wording of the sign in letters that are 39 points in size (approximately one centimeter high).

(9) The body of the sign shall be the following five bulleted statements:

-WEAR EYE PROTECTION TO PREVENT BLINDNESS

-TALK TO YOUR DOCTOR IF YOU ARE PREGNANT OR USE ORAL CONTRACEPTIVES

-SOME COSMETICS OR MEDICINES MAY MAKE YOU BURN EASILY - TALK TO YOUR DOCTOR.

-FREQUENT OR LENGTHY EXPOSURE MAY CAUSE SKIN CANCER OR OTHER SEVERE SKIN DAMAGE

-YOU SHOULD WAIT 48 HRS BETWEEN TANNING SESSIONS

(10) The vertical spacing between each of the bulleted statements shall be approximately 1.6 centimeters. The margins to the right and left of the bulleted statements shall be no less than 4.4 centimeters.

(11) The vertical spacing between the last bulleted statement and the bottom margin of the paper shall be no less than two centimeters.

(12) Local health departments may add additional warning requirements that are applicable to all patrons of all tanning facilities.

**R392-700-6. Written and Signed Consent.**

(1) It is unlawful for any operator of a tanning facility to allow a person younger than 18 years old to use a tanning device, except upon meeting the requirements of 26-15-13. The consent form shall conform to the Utah Department of Health Tanning Consent Form, October 15, 2007, which is incorporated by reference.

(2) Before allowing any patron to use a tanning device, the operator shall upon a patron's initial visit to the tanning facility and annually thereafter:

(a) provide the patron a written paper notice containing the information in subsection (3);

(b) provide the patron an opportunity to read the notice and ask questions;

(c) obtain the patron's dated signature signifying that the patron has read the notice;

- (d) give the patron a copy of the notice.
- (3) The notice required in subsection (2) shall include the following:
  - (a) a representative list of potential photosensitizing drugs and agents;
  - (b) information regarding potential negative health effects related to ultraviolet exposure including:
    - (i) the increased risk of skin cancer;
    - (ii) the increased risk of skin thinning and premature aging;
    - (iii) the possible adverse effect on some viral conditions or medical condition, such as lupus when using a tanning device.
  - (c) information on how to determine skin sensitivity, and information on how different skin types respond to the tanning facilities different tanning devices;
  - (d) an explanation of Ultraviolet-A (UVA) and Ultraviolet-B (UVB) light's effect on the body, the need to use proper protective eyewear with both UV-A and UV-B systems, and that closing the eyes is not sufficient to prevent possible eye damage;
  - (e) information on the capacity of devices, including proper exposure times and intensity;
  - (f) information on the risk of tanning too frequently and on over exposure;
  - (g) information that tanning may be inadvisable during pregnancy; and
  - (h) other relevant medical information as determined by the local health department.

(3) The operator shall retain the signed patron notices at the tanning facility and make them readily available for inspection by the Department and local health department.

(4) The operator shall provide a separate enclosed area for each tanning device that ensures patron safety and privacy.

(5) The operator shall ensure that only one person enters tanning area during a tanning session.

(6) The operator shall not allow an animal, except for a service animal, to be in a tanning area during a tanning session. The operator shall ensure that service animals allowed in tanning areas be provided eye protection from UV exposure.

#### **R392-700-7. Tanning Devices.**

(1) A tanning facility may use only commercially available tanning devices manufactured and certified in compliance with 21 CFR 801.4, 21 CFR 1010.2 and 1010.3, and 21 CFR 1040.20.

(a) The operator shall follow all manufacturer safety instructions applicable to each tanning device.

(b) The operator shall not:

(i) operate any tanning device that has an ineffective or inoperable timing device or for which the timing device is missing;

(ii) exceed the manufacturer's maximum recommended exposure time; or

(iii) exceed the exposure time recommended by the manufacturer in compliance with 21 CFR 1040.20(d)(1)(iv).

(3) The operator shall maintain at the tanning facility the manufacturer's operating instructions, exposure recommendations, and safety instructions for each tanning device.

(4) The operator shall centrally install and locate the timing device controls for each tanning device so that a patron may not set or reset the exposure time on any tanning device.

(5) The operator shall control the temperature of the consumer contact surfaces of a tanning device and the surrounding area so that it will not exceed 100 degrees Fahrenheit.

(6) The operator shall maintain the tanning devices in good repair.

(7) The operator shall provide physical barriers to protect

patrons from possible injury which may be induced by touching or breaking tanning equipment lamps.

(8) The operator shall provide physical barriers or other methods, such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the patron's skin.

(9) The operator shall replace defective or burned-out lamps or filters with lamps and filters that are clearly identified by brand and model designation by the replacement lamp by the lamp manufacturer. The operator shall maintain lamp manufacturer's labeling and user instructions at the facility that demonstrate the equivalence of any replacement lamp or filter.

(10) An operator shall not advertise or promote the use of any tanning equipment using wording such as "safe," "safe tanning," "no harmful rays," "no adverse effect," "free from risk," or similar wording or concept.

(11) The operator shall track each patron's usage to ensure that a patron does not use a tanning device more frequently than once each calendar day or in excess of the manufacturer's recommended exposure.

(12) The tanning device shall allow each patron to exit the tanning device without assistance from the operator.

(13) The operator shall assess each patron's skin type and sensitivity and consider the intensity of the radiation output of the tanning devices in the tanning facility when assigning a patron to use a particular tanning device.

#### **R392-700-8. Protective Eye Wear.**

Prior to each tanning session, the operator shall offer protective eye wear to each patron, instructions for its use, and notify the patron of possible damage that might occur to the patron if the patron does not wear it. Protective eye wear shall be eye wear that is supplied by the manufacturer for use with the tanning device or that is the equivalent to the protective eye wear supplied by the manufacturer.

#### **R392-700-9. Tanning Physical Facilities.**

(1) The operator shall provide a restroom that includes a flushing toilet and a hand-washing sink with hot and cold running water accessible to patrons at each tanning facility. The operator shall ensure that tanning facility floors and walls in the toilet and hand-washing areas are constructed of smooth, non-absorbent material.

(2) The operator shall ensure that all areas of the tanning facility and temporary tanning facility are properly ventilated. The internal ambient air temperature of the facility shall not exceed 85 degrees F.

(3) The operator shall ensure that all rooms of a tanning facility are capable of being illuminated to allow for proper cleaning and sanitizing.

(4) To prevent patron slip injury, the operator shall ensure that the floor adjacent to each tanning device is clean and slip resistant to allow for safe entry and exit from the tanning device.

#### **R392-700-10. Tanning Facility Sanitation.**

(1) The operator shall maintain in good repair and in a sanitary condition all portions of the tanning facility, including wall, floors, ceilings, and equipment.

(2) The operator shall clean and sanitize before each use, all:

- (a) reusable protective eye wear;
- (b) body contact surfaces of the tanning device; and
- (c) body contact surfaces of the tanning booth, including all seating surfaces and door knobs.

(3) The operator shall clean the items in subsection (2) using a detergent or other agent able to emulsify oils and hold dirt in suspension using a concentration as indicated by the detergent or other agent manufacturer's use directions included

on the product labeling. The operator shall sanitize the items in subsection (2) with a chlorine sanitizer or a quaternary ammonia compound using a concentration as indicated by the sanitizer or compound manufacturer's use directions included on the product labeling.

(4) If the operator cleans the items in a separate process from sanitizing the items, the operator shall clean the items prior to sanitizing them. The operator may use a single product to both clean and sanitize if that product meets the requirements of subsection (3) for the cleaning and sanitizing of the items in subsection (2).

(5) The operator shall ensure that restroom facilities are maintained in a clean and sanitary condition. The operator shall provide hand soap and single use hand drying towels or a hand drying mechanism for patron use.

(6) The operator shall clean and sanitize towels or other linens after each use.

**R392-700-11. Enforcement and Penalties.**

A person who violates a provision of this rule that is also a provision of Section 26-15-13 may be subject to a class C misdemeanor. A person who violates a provision of this rule that is not also a provision of Section 26-15-13 is subject to a civil penalty as provided in Section 26-23-6.

**KEY: tanning beds, salons, sanitation, ultraviolet light safety**

**March 15, 2010**

**26-15-2**

**26-15-13**

**R396. Health, Community and Family Health Services, Immunization.****R396-100. Immunization Rule for Students.****R396-100-1. Purpose and Authority.**

(1) This rule implements the immunization requirements of Title 53A, Chapter 11, Part 3. It establishes minimum immunization requirements for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family home care, or Head Start program in this state. It establishes:

- (a) required doses and frequency of vaccine administration;
- (b) reporting of statistical data; and
- (c) time periods for conditional enrollment.

(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.

**R396-100-2. Definitions.**

As used in this rule:

"Department" means the Utah Department of Health.

"Early Childhood Program" means a nursery or preschool, licensed day care center, child care facility, family care home, or Head Start program.

"Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.

"Parent" means a biological or adoptive parent who has legal custody of a child; a legal guardian, or the student, if of legal age.

"School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12.

"School entry" means a student, at any grade, entering a Utah school or an early childhood program for the first time.

"Student" means an individual enrolled or attempting to enroll in a school or early childhood program.

**R396-100-3. Required Immunizations.**

(1) A student born before July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, and Rubella.

(2) A student born after July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hepatitis B.

(3) A student born after July 1, 1993, must also meet the minimum immunization requirements of the ACIP prior to entry into the seventh grade for the following antigens: Tetanus, Diphtheria, Pertussis and Varicella.

(4) A student born after July 1, 1996 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, and Varicella.

(5) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Haemophilus Influenza Type b, Hepatitis A, Hepatitis B, Pneumococcal, and Varicella vaccines prior to school entry.

(6) The vaccinations must be administered according to the recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) as listed below which are incorporated by reference into this rule:

(a) General Recommendations on Immunization: December 1, 2006/Vol. 55/No. RR-15;

(b) Immunization of Adolescents: November 22,

1996/Vol. 45/No. RR-13;

(c) Combination Vaccines for Childhood Immunization: May 14, 1999/Vol. 48/No. RR-5;

(d) Diphtheria, Tetanus, and Pertussis: Recommendations for Vaccine Use and Other Preventive Measures: August 8, 1991/Vol. 40/No. RR-10;

(e) Pertussis Vaccination: Use of Acellular Pertussis Vaccines Among Infants and Children: March 28, 1997/Vol. 46/No. RR-7;

(f) Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: November 17, 2000/Vol. 49/No. RR-13;

(g) Preventing Tetanus, Diphtheria, and Pertussis Among Adolescents: Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis Vaccines: March 24, 2006/Vol. 55/No. RR-3;

(h) A Comprehensive Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States December 23, 2005/Vol. 54/No. RR-6;

(i) Haemophilus b Conjugate Vaccines for Prevention of Haemophilus influenzae Type b Disease Among Infants and Children Two Months of Age and Older: January 11, 1991/Vol. 40/No. RR-1;

(j) Recommendations for Use of Haemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Haemophilus b Vaccine: September 17, 1993/Vol. 42/No. RR-13;

(k) Measles, Mumps, and Rubella-Vaccine Use and Strategies for Elimination of Measles, Rubella, and Congenital Rubella Syndrome and Control of Mumps: May 22, 1998/Vol. 47/No. RR-8;

(l) Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP) for the Control and Elimination of Mumps: June 9, 2006/Vol. 55/No. 22;

(m) Poliomyelitis Prevention in the United States: May 19, 2000/Vol. 49/No. RR-5;

(n) Prevention of Varicella: June 22, 2007/Vol. 56/No. RR-4;

(o) Prevention of Hepatitis A Through Active or Passive Immunization: May 29, 2006/Vol. 55/No. RR-7; and

(p) Preventing Pneumococcal Disease Among Infants and Young Children: October 6, 2000/Vol. 49/No. RR-9.

**R396-100-4. Official Utah School Immunization Record (USIR).**

(1) Schools and early childhood programs shall use the official Utah School Immunization Record (USIR) form as the record of each student's immunizations. The Department shall provide copies of the USIR to schools, early childhood programs, physicians, and local health departments upon each of their requests.

(2) Each school or early childhood program shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization. It shall transfer this information to the USIR with the following information:

- (a) name of the student;
- (b) student's date of birth;
- (c) vaccine administered; and
- (d) the month, day, and year each dose of vaccine was administered.

(3) Each school and early childhood program shall maintain a file of the USIR for each student in all grades and an exemption form for each student claiming an exemption.

(a) The school and early childhood programs shall maintain up-to-date records of the immunization status for all students in all grades such that it can quickly exclude all non-immunized students if an outbreak occurs.

(b) If a student withdraws, transfers, is promoted or otherwise leaves school, the school or early childhood program shall either:

(i) return the USIR and any exemption form to the parent of a student; or

(ii) transfer the USIR and any exemption form with the student's official school record to the new school or early childhood program.

(4) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by any school or early childhood program.

(5) Schools and early childhood programs may meet the record keeping requirements of this section by keeping its official school immunization records in the Utah Statewide Immunization Information System (USIIS).

#### **R396-100-5. Exemptions.**

A parent claiming an exemption to immunization for medical, religious or personal reasons, as allowed by Section 53A-11-302, shall provide to the student's school or early childhood program the required completed forms. The school or early childhood program shall attach the forms to the student's USIR.

#### **R396-100-6. Reporting Requirements.**

(1) Each school and early childhood program shall report the following to the Department in the form or format prescribed by the Department:

(a) by November 30 of each year, a statistical report of the immunization status of students enrolled in a licensed day care center, Head Start program, and kindergartens;

(b) by November 30 of each year, a statistical report of the two-dose measles, mumps, and rubella immunization status of all kindergarten through twelfth grade students;

(c) by November 30 of each year, a statistical report of tetanus, diphtheria, pertussis, hepatitis B, varicella, and the two-dose measles, mumps, and rubella immunization status of all seventh grade students; and

(d) by June 15 of each year, a statistical follow-up report of those students not appropriately immunized from the November 30 report in all public schools, kindergarten through twelfth grade.

(2) The information that the Department requires in the reports shall be in accordance with the Centers for Disease Control and Prevention guidelines.

#### **R396-100-7. Conditional Enrollment and Exclusion.**

A school or early childhood program may conditionally enroll a student who is not appropriately immunized as required in this rule. To be conditionally enrolled, a student must have received at least one dose of each required vaccine and be on schedule for subsequent immunizations. If subsequent immunizations are one calendar month past due, the school or early childhood program must immediately exclude the student from the school or early childhood program.

(1) A school or early childhood program with conditionally enrolled students shall routinely review every 30 days the immunization status of all conditionally enrolled students until each student has completed the subsequent doses and provided written documentation to the school or early childhood program.

(2) Once the student has met the requirements of this rule, the school or early childhood program shall take the student off conditional status.

#### **R396-100-8. Exclusions of Students Who Are Under Exemption and Conditionally Enrolled Status.**

(1) A local or state health department representative may exclude a student who has claimed an exemption to all vaccines

or to one vaccine or who is conditionally enrolled from school attendance if there is good cause to believe that the student has a vaccine preventable disease and:

(a) has been exposed to a vaccine-preventable disease; or

(b) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) An excluded student may not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

#### **R396-100-9. Penalties.**

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6.

#### **KEY: immunizations, rules and procedures**

**March 15, 2010**

**Notice of Continuation July 25, 2008**

**53A-11-303**

**53A-11-306**



**R398. Health, Community and Family Health Services, Children with Special Health Care Needs.**

**R398-2. Newborn Hearing Screening.**

**R398-2-1. Purpose and Authority.**

(1) The purpose of this rule is to facilitate early detection, prompt referral, and early habilitation of infants with significant, permanent hearing loss.

(2) Authority for the Newborn Hearing Screening program and promulgation of rules to implement the program are found in Section 26-10-6.

**R398-2-2. Definitions.**

(1) "Hearing loss" means a dysfunction of the auditory system of any type or degree that is sufficient to interfere with the acquisition and development of speech and language skills.

(2) "Screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist or physician with the Department approved instrumentation, protocols and pass/refer criteria.

(3) "Auditory brainstem response" means an objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

(4) "Automated auditory brainstem response" means objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment which automatically provides a pass/refer outcome.

(5) "Evoked otoacoustic emissions" means a specific test method which elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Products Otoacoustic Emissions test procedures.

(6) "Diagnostic procedures" means audiometric and medical procedures required to diagnose hearing loss.

(7) "Department" means the Utah Department of Health.

(8) "Audiologist" means a person who is licensed by the state where services are provided.

(9) "Follow-up" means appropriate services and procedures relating to the confirmation of hearing loss and appropriate referrals for newborn children with abnormal or inconclusive screening results.

(10) "Referral" means to direct a newborn to a health care professional for appropriate diagnostic procedures to diagnose and determine the existence and extent of a hearing loss; and for appropriate habilitation of a hearing loss.

(11) "Tracking" means the use of information about the infant's newborn hearing screening status to ensure that the infant receives timely and appropriate services to complete the screening and referral process.

(12) "Lost to follow-up" means those newborns who cannot be identified through tracking, and who have not completed the screening and referral process.

(13) "Institution" means a facility licensed by the State of Utah for birthing babies.

(14) "Primary care provider" means the newborn or infant's primary medical caregiver.

(15) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

**R398-2-3. Implementation.**

Each newborn in the state of Utah shall submit to the Newborn Hearing Screening testing, except as provided in Section 26-10-6(1).

**R398-2-4. Responsibility for Screening.**

(1) Each institution shall designate a person to be responsible for the newborn hearing screening program in that institution.

(2) An audiologist who is licensed by the State of Utah

shall oversee each newborn hearing screening program. This audiologist may be full or part time, on or off site, an employee of the institution, or under contract or other arrangement that allows him/her to oversee the newborn hearing screening program. This audiologist shall advise the institution about all aspects of the newborn hearing screening program, including screening, tracking, follow-up, and referral for diagnosis.

(3) Beginning July 1, 1998, if the newborn is born in an institution with 100 or more births annually, and beginning July 1, 1999, if the newborn is born in an institution with less than 100 births annually, the institution must provide hearing screening services as required by this rule prior to discharge, unless the infant is transferred to another institution before screening is completed.

(4) Beginning July 1, 1998, if the newborn is transferred to another institution before screening is completed, the receiving institution must provide hearing screening services as required by this rule prior to discharge.

(5) Beginning July 1, 1999, if the newborn is born outside of an institution, the person in attendance at the birth must arrange for the infant's hearing screening as required by this rule.

(6) Beginning July 1, 1999, if there is no person in attendance at the birth, a parent must have the infant's hearing screened, according to Department protocols, by the time the infant is one month of age.

(7) Newborn hearing screening shall be performed by a person who is appropriately trained and supervised, according to rules as may be established by the Newborn Hearing Screening Committee.

**R398-2-5. Information to Parents and Primary Care Providers.**

(1) Institutions or persons primarily responsible for births shall provide information about newborn hearing screening to parents and primary care providers of newborns. This shall include:

(a) information, which shall be available to parents at the time of birth, about the purpose of newborn hearing screening, the procedures used for screening, the benefits of newborn hearing screening, and the consequences of hearing loss;

(b) whether each live birth was screened prior to discharge from the institution,

(c) the results of the completed newborn hearing screening procedure;

(d) what follow-up screening procedures, if any, are recommended and where those procedures can be obtained.

(2) For babies who require additional procedures to complete the screening after being discharged from the birthing institution, the institution shall provide parents and the primary care providers with written notice about the availability and importance of the additional screening procedures. For babies who do not complete additional hearing screening procedures, the institution shall send a second written notice to the parents and the primary care provider.

(3) For babies who do not pass the complete newborn hearing screening procedure, the institution or the provider who completes the screening procedure shall provide the parents and the primary care provider with written notice about the results of the screening, recommended diagnostic procedures, where those procedures can be obtained, and resources available for infants and toddlers with hearing loss.

(4) For babies who need additional procedures to complete the screening due to a missed test, inconclusive results, or a failure to pass, and who do not return for the needed screening procedures within 15 days, or for babies who are "lost to follow-up," the institution shall make reasonable efforts within 30 days to locate the parents and inform them of the need for a test. To be considered a reasonable effort, the institution must have

documentation of at least two attempts to contact the infant's parents by mail or phone, and at least one attempt to contact the infant's primary care provider. If necessary, the institution must use information available from its own records, adoption agencies, and the newborn's primary care provider. Contact with the parent may be made by mail, telephone, primary care provider, or public health worker.

**R398-2-6. Reporting to Utah Department of Health.**

(1) All institutions or persons in attendance at births shall submit information to the Department about the newborn hearing screening procedures being used, the results of the screening, and other information necessary to ensure timely referral where necessary. This information shall be provided to the Department at least monthly. This information shall include:

(a) for each live birth, identifying information for the baby and the hearing screening status, e.g., passed, referred, refused, missed, transferred;

(b) for babies who did not pass the newborn hearing screening or who were not screened, the mother's name, address, telephone number if known, and primary care provider;

(c) any information the institution or practitioner has about the results of follow-up screening or diagnostic procedures, including whether the infant has been "lost to follow-up."

(2) All institutions or persons in attendance at births shall submit information to the Department a summary of the procedures used by the institution or screening program to do newborn hearing screening, including the name of the program director, equipment, screening protocols, referral criteria, and parent education materials. This information shall be provided to the Utah Department of Health bi-annually and within 30 days of any changes to the existing procedures.

(3) Persons who conduct any procedure necessary to complete an infant's hearing screening or audiological diagnostic assessment as a result of a referral from an institution or primary care provider, shall report the results of these procedures to the institution where the infant was born and to the Department.

(4) The Utah Department of Health shall have access to infant's medical records to obtain information necessary to ensure the provision of timely and appropriate follow-up diagnostic and intervention services.

**R398-2-7. Penalty for Violation of Rule.**

Any person who violates any provision of this rule may be assessed a penalty as provided in Section 26-23-6.

**KEY: newborn hearing screening**  
**March 15, 2010**  
**Notice of Continuation July 2, 2008**

**26-10-6**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-1. Utah Medicaid Program.**

**R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

**R414-1-2. Definitions.**

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
  - (a) who are otherwise eligible for Medicaid; and
  - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
  - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
  - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
  - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
  - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
  - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
  - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
  - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
  - (a) placing the patient's health in serious jeopardy;
  - (b) serious impairment to bodily functions;
  - (c) serious dysfunction of any bodily organ or part; or
  - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

**R414-1-3. Single State Agency.**

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

**R414-1-4. Medical Assistance Unit.**

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

**R414-1-5. Incorporations by Reference.**

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective April 1, 2010. It also incorporates by reference State Plan Amendments that become effective no later than April 1, 2010.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, April 1, 2010, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective April 1, 2010.

**R414-1-6. Services Available.**

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section

1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

**R414-1-7. Aliens.**

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

**R414-1-8. Statewide Basis.**

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

**R414-1-9. Medical Care Advisory Committee.**

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

**R414-1-10. Discrimination Prohibited.**

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be

subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

**R414-1-11. Administrative Hearings.**

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

**R414-1-12. Utilization Review.**

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.

(4) The standards in the InterQual Criteria shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

**R414-1-13. Provider and Client Agreements.**

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

**R414-1-14. Utilization Control.**

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services

available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) Prior authorization is a utilization control process to verify that the client is eligible to receive the service and that the service is medically necessary. Prior authorization requirements are identified in Section I sub-section 9 of the Utah Medicaid Provider Manual. Additional prior authorization instructions for specific types of providers is found in Section II of the Medicaid Provider Manual. All necessary medical record documentation for prior approval must be submitted with the request. If the provider has not followed the prior authorization instructions and obtained prior authorization for a service identified in the Medicaid Provider Manual as requiring prior authorization, the Department shall not reimburse for the service.

(4) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(5) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(6) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

**R414-1-15. Medicaid Fraud.**

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

**R414-1-16. Confidentiality.**

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

**R414-1-17. Eligibility Determinations.**

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah

Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

**R414-1-18. Professional Standards Review Organization.**

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

**R414-1-19. Timeliness in Eligibility Determinations.**

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

**R414-1-20. Residency.**

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

**R414-1-21. Out-of-state Services.**

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

**R414-1-22. Retroactive Coverage.**

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

**R414-1-23. Freedom of Choice of Provider.**

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

**R414-1-24. Availability of Program Manuals and Policy Issuances.**

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

**R414-1-25. Billing Codes.**

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

**R414-1-26. General Rule Format.**

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this

format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

**R414-1-27. Determination of Death.**

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

**KEY: Medicaid**

**April 1, 2010**

**Notice of Continuation April 16, 2007**

**26-1-5**

**26-18-3**

**23-34-2**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-7B. Nursing Assistant Training and Competency Evaluation Program.****R414-7B-1. Introduction and Authority.**

The Nursing Assistant Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211,(b)(5)(A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nursing assistant (CNA) to provide quality nursing services to nursing facility residents.

**R414-7B-2. Definitions.**

(a) "Certified Nursing Assistant" means any person who completes a UNAR-approved nursing assistant training program and passes the state certification examination.

(b) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nursing assistant and a demonstration of the tasks the nursing assistant is expected to perform as part of the assistant's function.

(c) "Deemed competency" means that an individual is deemed to be competent if the individual completed a state-approved nursing assistant training program on or before July 1, 1989.

(d) "Nursing assistant" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(e) "Nursing Assistant Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nursing assistant in the state of Utah.

(f) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(g) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(h) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(i) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

(j) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

(k) "Train-the-trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.

(l) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

(m) "Utah Nursing Assistant Registry" means the state agency that approves nursing assistant training programs, monitors all UNAR test sites, maintains an abuse registry for all

substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing facility or Medicare and Medicaid facility, certifies nursing assistants who have completed a nursing assistant training program, and renews certifications of qualified CNAs.

**R414-7B-3. Program Access Requirements.**

(1) A nursing assistant is required to complete a UNAR-approved nursing assistant training program and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a nursing assistant on or before July 1, 1989, is deemed to be competent and to have met the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the waiver request. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, she must complete a UNAR-approved nursing assistant training program;

(b) an expired licensed nurse who can show proof of previous licensure and who was in good standing with her professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, she must complete a UNAR-approved nursing assistant training program.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, the candidate must complete a UNAR-approved nursing assistant training program;

(d) any out-of-state CNA deemed certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in her state.

(4) An out-of-state expired CNA must complete a UNAR-approved nursing assistant training program.

**R414-7B-4. Competency Evaluation.**

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nursing assistants must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nursing assistant, and a UNAR-approved representative must administer and evaluate the demonstration. (b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved nursing assistant training program;

(d) UNAR must advise an individual who takes the competency evaluation that a record of the outcome of the evaluation shall be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nursing assistant's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. The questions shall be developed from a pool of test questions, only a portion of which shall be used in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(f) The competency evaluation must include a demonstration of the tasks the nursing assistant is expected to perform as part of the assistant's function as a CNA;

(g) For the skills training component of the evaluation, UNAR shall establish a performance record for each nursing assistant training program of major duties and skills taught that include:

(i) a listing of the duties and skills that UNAR expects a CNA to learn in the program in accordance with Section R414-7B-4;

(ii) a record that documents when the nursing assistant performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the nursing assistant training program, the nursing assistant shall receive a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation consists of a minimum performance of five tasks, all of which are included in the performance record. UNAR shall select five tasks for each nursing assistant from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

#### **R414-7B-5. Nurse Assistant Training Program.**

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a nursing assistant training program must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a nursing assistant training program must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with Section R414-7B-5, UNAR shall review and render a determination regarding approval or disapproval of any nursing assistant training program when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private nursing assistant training program.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a nursing assistant training program that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is 16 years of age and older on or before the first day that the student begins class; and

(b) shall include an orientation to the training program.

(7) The nursing assistant training program must meet minimal content requirements to be UNAR-approved.

(a) NATCEP must consist of no less than 80 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting residents' independence;

(v) respecting residents' rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 16 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies prior to training in any facility. The skills training must ensure that each nursing assistant demonstrates competencies in the following areas:

(i) Basic nursing skills:

(A) taking and recording vital signs;

(B) measuring and recording height;

(C) caring for residents' environment; and

(D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:

(A) bathing that includes mouth care;

(B) grooming;

(C) dressing;

(D) using the toilet;

(E) assisting with eating and hydration;

(F) proper feeding techniques; and

(G) skin care.

(iii) Basic restorative services:

(A) use of assistive devices in ambulation, eating, and dressing;

(B) maintenance of range of motion;

(C) proper turning and positioning in bed and chair;

(D) bowel and bladder training;

(E) care and use of prosthetic and orthotic devices; and

(F) transfer techniques.

(iv) Mental Health and Social Service Skills:

(A) modifying her own behavior in response to the resident's behavior;

(B) identifying developmental tasks associated with the aging process;

(C) training the resident in self-care according to the resident's ability;

(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity; and

(F) using the resident's family as a source of emotional support.

(v) Resident's rights:

(a) providing privacy and maintaining confidentiality;

(b) promoting the resident's right to make personal choices to accommodate the resident's needs;

(c) giving assistance in solving grievances;

(d) providing needed assistance in getting to and participating in resident and family groups and other activities;

(e) maintaining care and security of resident's personal possessions;

(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and

(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.

(8) Qualification of Instructors:



(a) a nursing assistant training program must have a program coordinator who is a registered nurse with a current and active Utah license to practice;

(b) who is in good standing with DOPL;

(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and

(d) must have three hours of documented consulting time per month with the respective program.

(9) Nursing facility-based programs:

(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements.

(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and

(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a nursing assistant training program, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach adult learners as defined by UNAR.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator or primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other appropriate and duly qualified personnel.

(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

(15) A nursing assistant training program must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

(16) A nursing assistant training program must provide a classroom with the following:

(a) adequate space and furniture for the number of students;

(b) adequate lighting and ventilation;

(c) comfortable temperature;

(d) appropriate audio-visual equipment;

(e) skills lab equipment to simulate a resident's unit;

(f) clean and safe environment; and

(g) appropriate textbooks and reference materials.

(17) Initial post-approval and ongoing reviews:

(a) After the initial approval of a nursing assistant training program, UNAR grants a one-year probationary period;

(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;

(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews

at least every two years;

(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation, UNAR must make an on-site visit within one year of the self-evaluation.

(18) The training and evaluation program review must include:

(a) skills training experience;

(b) maintenance of qualified faculty members for both classroom and skills portions of the nursing assistant training program;

(c) maintenance of the security of the competency evaluation examinations;

(d) a record of complaints received about the program;

(e) a record that each nursing facility has provided certified nursing assistants with 12 hours of staff development training per year with the compensation for the training;

(f) curriculum content that meets state and federal requirements; and

(g) classroom facilities and required equipment that meet state, federal and UNAR requirements.

(19) In addition to the nursing assistant training that UNAR requires, all nursing assistants shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training. This orientation phase shall include an explanation of:

(a) the organizational structure of the facility;

(b) the facility policies and procedures;

(c) the philosophy of care of the facility;

(d) the description of the resident population; and

(e) the employee rules.

#### **R414-7B-6. Nurse Aide Registry.**

(1) UNAR is the central registry for all certified nursing assistants. This registry must include identification of individuals who have successfully completed and passed a nursing assistant training program with a passing score of 75.

(2) A nursing assistant training program must report to UNAR, within five days of the completion date of the program, the names of all individuals who have satisfactorily completed the certified nursing assistant training program.

(3) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

(4) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

(5) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

#### **R414-7B-7. Limitations.**

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a nursing assistant training program at least every two years.

(3) A skilled nursing facility that participates in a

Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a nursing assistant for more than 120 days only if the assistant has completed a nursing assistant training program.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

(6) A nursing assistant who does not perform paid services that total at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months that follow the completion date of the state-approved nursing assistant training program or certification renewal, must retrain and repeat the skills and written examination.

(7) A candidate has one attempt to pass both the skills and written portion of the examination. If the candidate fails either portion of the examination, the candidate must complete a UNAR-approved nursing assistant training program.

**KEY: Medicaid**

**March 29, 2010**

**Notice of Continuation October 20, 2009**

**26-1-4.1**

**26-1-5**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction and Authority.**

(1) This rule governs the provision of speech-language pathology services.

(2) This rule is authorized by Sections 26-18-3 and 26-18-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

**R414-54-2. Definitions.**

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

**R414-54-3. Services.**

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual, effective April 1, 2010, which is incorporated by reference.

(3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

**R414-54-4. Client Eligibility Requirements.**

(1) Speech-language pathology services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving speech-language pathology services may receive speech-language pathology services as described in the Speech-Language Pathology Provider Manual.

(3) An individual receiving speech-language pathology services must meet the criteria established in the Speech-Language Pathology Provider Manual and obtain prior approval if required.

**R414-54-5. Reimbursement.**

Speech-language pathology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

**KEY: Medicaid, speech-language pathology services****April 1, 2010****26-1-5****Notice of Continuation March 9, 2009****26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-59. Audiology-Hearing Services.****R414-59-1. Introduction and Authority.**

(1) This rule governs the provision of audiology-hearing services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

**R414-59-2. Definitions.**

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

**R414-59-3. Services.**

(1) Audiology-hearing services are optional services.

(2) Audiology-hearing services are limited to services described in the Audiology Services Provider Manual.

(3) The Audiology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Audiology-hearing services may be provided to an individual only after being referred by a physician. All audiology-hearing services must be provided by a licensed audiologist.

**R414-59-4. Client Eligibility Requirements.**

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual, effective April 1, 2010, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.

**R414-59-5. Reimbursement.**

Audiology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

**KEY: Medicaid, audiology****April 1, 2010****Notice of Continuation November 22, 2005****26-1-5****26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-302. Eligibility Requirements.**

**R414-302-1. Citizenship and Alienage.**

(1) The Department incorporates by reference 42 CFR 435.406 2008 ed., which requires applicants and recipients to be U.S. citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship and identity as described in 42 CFR 435.407.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 221(b)(1) of The Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 221(b)(2) of The Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of such infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for such infant as required under Section 221(b)(3) of The Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3.

**R414-302-2. Utah Residence.**

The Department adopts 42 CFR 435.403, 1997 ed., which is incorporated by reference. The Department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

**R414-302-3. Local Office Residence.**

Applicants may apply at any local office or outreach location. The Department may require applicants also applying for services from the Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside.

**R414-302-4. Residents of Institutions.**

(1) The Department provides Medicaid coverage to individuals who are residents of institutions subject to the limitations related to residents of public institutions, patients in an institution for mental diseases who do not meet the age criteria, and patients in an institution for tuberculosis as defined in 42 CFR 435.1009, 2009 ed., which is incorporated by reference. The Department also incorporates by reference the

definitions in 42 CFR 435.1010, 2009 ed.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease as non-residents while on conditional or convalescent leave from the institution.

(5) The Department limits Medicaid eligibility for residents of institutions for mental disease to individuals residing in the Utah State Hospital who meet the age requirements and other eligibility criteria.

**R414-302-5. Social Security Numbers.**

(1) The Department adopts 42 CFR 435.910, 1997 ed., which is incorporated by reference. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

(2) Clients must provide their correct Social Security Number (SSN).

(a) The Department requires clients to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.

(b) The Department requires clients who do not know their SSN or provide a SSN that is questionable to provide proof of application for a SSN upon application for Medicaid.

(c) Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

(d) The Department requires a new proof of application for a SSN at each recertification if the SSN has not been provided previously.

**R414-302-6. Application for Other Possible Benefits.**

The Department requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits as required by 42 CFR 435.608, 2004 ed., which is incorporated by reference.

(2) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

**R414-302-7. Third Party Liability.**

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 1997 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which are incorporated by reference.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client noncooperative if the client knowingly withholds third party liability information.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client

fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

**R414-302-8. Medical Support Enforcement.**

The Department adopts 42 CFR 433.145 through 433.148, 1997 ed., which is incorporated by reference.

**R414-302-9. Relationship Determination for Family Medicaid.**

The Department adopts 42 CFR 435.602(a), 1997 ed., which is incorporated by reference.

**R414-302-10. Strikers - Family Medicaid.**

The Department adopts 45 CFR 233.106, 1997 ed., which is incorporated by reference.

**KEY: public assistance programs, application, eligibility, Medicaid**

**April 1, 2010**

**26-18**

**Notice of Continuation January 25, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-303. Coverage Groups.****R414-303-1. Authority and Purpose.**

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

- (1) Aged;
- (2) Blind;
- (3) Disabled;
- (4) Family;
- (5) Institutional;
- (6) Transitional;
- (7) Child;
- (8) Refugee;
- (9) Prenatal and Newborn;
- (10) Pregnant Women;
- (11) Community Supports Waiver for Home and Community Based Services;
- (12) Aging Home and Community Based Services Waiver;
- (13) Technologically Dependent Child Waiver/Travis C. Waiver;
- (14) Brain Injury Home and Community Based Services Waiver;
- (15) Physical Disabilities Waiver; and
- (16) Cancer Program.

**R414-303-2. Definitions.**

The definitions in R414-1 and R414-301 apply to this rule. In addition:

- (1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.
- (2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

**R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.**

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, 2009 ed., which are incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2009, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2009, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts the disability determination requirements described in 42 CFR 435.541, 2009 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, 416.1015(a)

through (e), and 416.1016, 2009 ed., which are incorporated by reference, to decide if an individual is disabled. The Department notifies the Medicaid eligibility agency of its disability decision, who then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-6.

(a) The individual may provide the Medicaid eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Medicaid eligibility agency notifies the individual of the reconsideration decision. Thereafter, the individual may choose to pursue or abandon the fair hearing.

(5) If the Medicaid eligibility agency denies an individual's Medicaid application because the Medicaid Disability Review Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the Medicaid eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2009, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2009, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2009, for a given year, or as subsequently authorized by Congress. The Medicaid eligibility agency will deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

#### **R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.**

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be

included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) \$90 will be deducted from the monthly gross earned income for each employed person.

(iii) The \$30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be \$200.00 per child under age two, and \$175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is \$160.00 per child under age two, and \$140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative's household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.



**R414-303-5. 12 Month Transitional Family Medicaid.**

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2).

**R414-303-6. Four Month Transitional Family Medicaid.**

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

**R414-303-7. Foster Care and Independent Foster Care Adolescents.**

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

**R414-303-8. Subsidized Adoptions.**

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

**R414-303-9. Child Medicaid.**

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

**R414-303-10. Refugee Medicaid.**

(1) The Department provides medical assistance to refugees in accordance with the provisions of 45 CFR 400.90 through 400.107 and 45 CFR, Part 401.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

(7) The Department provides medical assistance to Iraqi and Afghan Special Immigrants in the same manner as medical assistance provided to other refugees.

**R414-303-11. Prenatal and Newborn Medicaid.**

(1) The Department incorporates by reference Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47), 1902(e)(4) and (5) and 1902(l), in effect January 1, 2009, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid, the agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Prenatal Medicaid whose countable resources exceed \$5,000 must pay four percent of countable resources to the agency to receive Prenatal Medicaid. The maximum payment amount is \$3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2009.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(11) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(12) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, without regard to whether the infant remains in the birth mother's home or whether the birth mother would continue to be eligible for Medicaid, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3. The infant must continue to be a Utah resident to receive coverage.

(13) Children who meet the criteria under the Social Security Act, Section 1902(l)(1)(D) may qualify for the newborn program through the month in which they turn 19. The agency deems the parent's income and resources to the 18-year old to determine eligibility when the 18-year old lives in the parent's home. An 18-year old who does not live with a parent may apply on his own, in which case the agency does not deem income or resources from the parent.

#### **R414-303-12. Pregnant Women Medicaid.**

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

#### **R414-303-13. DD/MR Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by

the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

#### **R414-303-14. Aging Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility

shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

**R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to \$125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to \$125.

**R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

**R414-303-17. Physical Disabilities Waiver.**

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section

1915(c) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than \$2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver or nursing home services.

**R414-303-18. Medicaid Cancer Program.**

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional

categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

**KEY: income, coverage groups, independent foster care adolescent**

**April 1, 2010**

**Notice of Continuation January 25, 2008**

**26-18-3**

**26-1-5**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-309. Medicare Drug Benefit Low-Income Subsidy Determination.****R414-309-1. Authority and Purpose.**

- (1) This rule is authorized by Title 26, Chapter 18, UCA.
- (2) The Medicare Modernization Act requires the state to have the ability, upon request, to determine eligibility for the Medicare drug benefit low-income subsidies as set forth in 42 CFR 423.904. This rule sets forth the requirements for completing eligibility determinations for the Medicare Part D low-income subsidies.

**R414-309-2. General Provisions.**

- (1) The Utah Department of Health shall make Medicare Part D Subsidy applications from the Social Security Administration available at State Medical Assistance Offices to individuals who want to apply for the Medicare drug benefit low-income subsidies, and may help individuals complete and send the form to the Social Security Administration.
- (2) The Department shall apply the eligibility criteria for the Medicare drug benefit low-income subsidy programs as defined in 42 CFR 423.904 in making any determinations that the state is required to make and shall notify the applicant of that decision.
- (3) If the Department determines that an applicant is not eligible for a Medicare drug benefit low-income subsidy, the applicant may appeal the Department's decision pursuant to the provisions of R410-14.
- (4) As required by 42 CFR 423.904, the Department exchanges information on Medicare Part D subsidy applicants and eligible individuals with the Centers for Medicare and Medicaid Services and with the Social Security Administration.

**KEY: Medicaid, eligibility****July 2, 2005****Notice of Continuation March 18, 2010****26-18**

**R426. Health, Health Systems Improvement, Emergency Medical Services.****R426-2. Air Medical Service Rules.****R426-2-1. Authority and Purpose.**

(1) This Rule is established under Chapter 8, Title 26a.

(2) The purpose of this Rule is to set forth air ambulance policies and rules and standards adopted by the Utah Emergency Medical Services Committee which promote and protect the health and safety of the people of this state.

**R426-2-2. Requirements for Licensure.**

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialities for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and

review each application. After review and before issuing a license to a new air medical service, the Department shall directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of four years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAMTS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAMTS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAMTS certification within one year of receiving a license under this rule.

**R426-2-3. Personnel Requirements.**

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an Emergency Medical Technician-Intermediate (EMT-I), EMT-Paramedic, Physician's Assistant, Registered Nurse, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, Respiratory Therapist, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and its in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in speciality education programs required by the air medical service job description (e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate speciality).

(b) Attend continuing education for speciality care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current speciality education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

#### **R426-2-4. Air Ambulance Vehicle Requirements.**

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained, and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA-approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self-contained interior lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned, sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or

by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended.

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

#### **R426-2-5. Equipment Standards.**

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

#### **R426-2-6. Operational Standards.**

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and

training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

#### **R426-2-7. Statutory Penalties.**

A person who violates this rule is subject to the provisions of Title 26, Chapter 23.

#### **KEY: emergency medical services**

**March 15, 2010**

**Notice of Continuation October 26, 2007**

**26-8**



**R426. Health, Health Systems Improvement, Emergency Medical Services.****R426-5. Statewide Trauma System Standards.****R426-5-1. Authority and Purpose.**

(1) Authority - This rule is established under Title 26, Chapter 8a, Part 2A, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

**R426-5-2. Trauma System Advisory Committee.**

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures established by the Department and applicable statutes.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

**R426-5-3. Trauma Center Categorization Guidelines.**

The Department adopts as criteria for Level I, Level II, Level III, and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2006. The Department adopts as criteria for Level IV and Level V trauma center designation the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 1999, except that a Level V trauma center need not have a general surgeon on the medical staff and may be staffed by nurse practitioners or certified physician assistants.

**R426-5-4. Trauma Review.**

(1) The Department shall evaluate trauma centers and

applicants to verify compliance with standards set in R426-5-2. In conducting each evaluation, the Department shall consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

**R426-5-5. Trauma Center Categorization Process.**

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-5.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

**R426-5-6. Trauma Center Designation Process.**

(1) Hospitals wishing designation recognition shall complete a Department application as outlined in R426-5-7.

(2) The Department shall, upon receipt of the completed application and appropriate fees, verify compliance to the designation level sought in accordance with protocols established by the department.

(3) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-5-7.

(4) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

**R426-5-7. Trauma Center Verification Process.**

(1) All designated Trauma Centers desiring to remain designated, shall apply for verification by submitting the following information to the Department at least six months prior to the anniversary date of initial designation:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) A letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) The data specified under R426-5-8;

(d) The minutes of pertinent hospital committee meetings for the previous year as specified by the Trauma Review Subcommittee, for example, trauma conferences, surgical morbidity and mortality meetings, emergency department or trauma death audits.

(e) A brief narrative report of trauma outreach education activities for the previous year;

(f) A brief narrative report of trauma research activities for the previous year including protocols and publications.

(2) All trauma centers desiring to apply for verification shall submit the required application and appropriate fees to the Department no later than January 1.

(3) Upon receipt of a verification application from the Department, accompanied by the information specified under R426-5-7(1)(a) through (f), the Trauma Review Committee shall conduct a review and report the results to the Department.

(4) Every three years, the Level I and II Trauma Centers must submit written documentation detailing the results of an American College of Surgeons site visit.

(5) Every three years from the date of initial designation or from a date specified by the Department, the Trauma Review

Subcommittee shall conduct a formal site visit for each designated Level III, IV, or V trauma center and report the results to the Department.

(6) The Department and the Trauma Review Committee may conduct activities with any designated trauma center to verify compliance with designation requirements which may include:

(a) Site visits to observe, unannounced, an actual trauma resuscitation, including the care and treatment of a trauma patient.

(b) Interview or survey prehospital care providers who frequent the trauma center, to ascertain that the pledged level of trauma care commitment is being maintained by the trauma center.

**R426-5-8. Data Requirements for an Inclusive Trauma System.**

(1) All hospitals shall collect, and quarterly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient are as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); and

(b) At least one of the following patient conditions: admitted to the hospital for 24 hours or longer; transferred in or out of your hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).

(c) Exclusion criteria are ICD9 Diagnostic Codes: 930-939.9 (foreign bodies) 905-909.9 (late effects of injury) 910-924.9 (superficial injuries, including blisters, contusions, abrasions, and insect bites)

The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographics:

- Database Record Number
- Institution ID number
- Medical Record Number
- Social Security Number
- Patient Home Zip Code
- Sex
- Date of Birth
- Age Number and Units
- Patient's Home Country
- Patient's Home State
- Patient's Home County
- Patient's Home City
- Alternate Home Residence
- Race
- Ethnicity

(ii) Injury:

- Date of Injury
- Time of Injury
- Blunt, Penetrating, or Burn Injury
- Cause of Injury Description
- Cause of Injury Code
- Work Related Injury (y/n)
- Patient's Occupational Industry
- Patient's Occupation
- Primary E-Code
- Location E-Code
- Additional E-Code
- Incident Location Zip Code
- Incident State

- Incident County
- Incident City
- Protective Devices
- Child Specific Restraint
- Airbag Deployment
- (iii) Prehospital:
  - Name of EMS Service
  - Transport Origin Scene or Referring Facility
  - Trip Form Obtained (y/n)
  - EMS Dispatch Date
  - EMS Dispatch Time
  - EMS Unit Arrival on Scene Date
  - EMS Unit Arrival on Scene Time
  - EMS Unit Scene Departure Date
  - EMS Unit Scene Departure Time
  - Transport Mode
  - Other Transport Mode
  - Initial Field Systolic Blood Pressure
  - Initial Field Pulse Rate
  - Initial Field Respiratory Rate
  - Initial Field Oxygen Saturation
  - Initial Field GCS-Eye
  - Initial Field GCS-Verbal
  - Initial Field GCS-Motor
  - Initial Field GCS-Total
  - Inter-Facility Transfer
  - (iv) Referring Hospital:
    - Transfer from Another Hospital (y/n)
    - Name or Code
    - Arrival Date
    - Arrival Time
    - Discharge Date
    - Discharge time
    - Transfer Mode
    - Admitted or ER
    - Procedures
    - Pulse
    - Capillary Refill
    - Respiratory Rate
    - Respiratory Effort
    - Blood Pressure
    - Eye Movement
    - Verbal Response
    - Motor Response
    - Glasgow Coma Score Total
    - Revised Trauma Score Total
    - (v) Emergency Department Information:
      - Mode of Transport
      - Arrival Date
      - Arrival Time
      - Discharge Time
      - Discharge Date
      - Initial ED/Hospital Pulse Rate
      - Initial ED/Hospital Temperature
      - Initial ED/Hospital Respiratory Rate
      - Initial ED/Hospital Respiratory Assistance
      - Initial ED/Hospital Oxygen Saturation
      - Initial ED/Hospital Systolic Blood Pressure
      - Initial ED/Hospital GCS-Eye
      - Initial ED/Hospital GCS-Verbal
      - Initial ED/Hospital GCS-Motor
      - Initial ED/Hospital GCS-Total
      - Initial ED/Hospital GCS Assessment Qualifiers
      - Revised Trauma Score Total
      - Alcohol Use Indicator
      - Drug Use Indicator
      - ED Discharge Disposition
      - ED Death
      - ED Discharge Date

ED Discharge Time  
 (vi) Emergency Department Treatment:  
 Procedures Done (pick list)  
 Paralytics used prior to GCS (y/n)  
 (vii) Admission Information:  
 Admit from ER or Direct Admit  
 Admitted from what Source  
 Time of Hospital Admission  
 Date of Hospital Admission  
 Hospital Procedures  
 Hospital Procedure Start Date  
 Hospital Procedure Start Time  
 (viii) Hospital Diagnosis:  
 ICD9 Diagnosis Codes  
 Injury Diagnoses  
 Co-Morbid Conditions  
 AIS Score for Diagnosis (calculated)  
 Injury Severity Score  
 (ix) Quality Assurance Indicators:  
 Hospital Complications  
 (x) Outcome:  
 Discharge Time  
 Discharge Date  
 Total Days Length of Stay  
 Total ICU Length of Stay  
 Total Ventilator Days  
 Disposition from Hospital  
 Destination Facility  
 (xi)Charges:  
 Payment Sources

**R426-5-9. Trauma Triage and Transfer Guidelines.**

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

**R426-5-10. Noncompliance to Standards.**

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-5.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

**R426-5-11. Statutory Penalties.**

A person who violates this rule is subject to the provisions of Title 26, Chapter 23.

**KEY: emergency medical services, trauma, reporting**  
**March 15, 2010** **26-8a-252**  
**Notice of Continuation July 18, 2007**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**

**R426-7. Emergency Medical Services Prehospital Data System Rules.**

**R426-7-1. Authority and Purpose.**

- (1) This rule is established under Title 26 chapter 8a.
- (2) The purpose of this rule is to establish minimum mandatory EMS data reporting requirements.

**R426-7-2. Definitions.**

As used in this rule:

- (1) "Emergency Medical Services Provider" means:
  - (a) a licensed ground or air ambulance provider; or
  - (b) a designated first responder.
- (2) "EMS Incident" means an instance in which an Emergency Medical Services Provider is requested to provide emergency medical services, including a mutual aid request, and which results in:
  - (a) a 911 response;
  - (b) an inter-facility transport;
  - (c) patient refusal of care;
  - (d) no care needed;
  - (e) a cancelled response; or
  - (f) an instance where no patient is found.
- (3) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

**R426-7-3. Prehospital Data Set.**

- (1) Emergency medical service providers shall collect data as identified by the Department in this rule.
- (2) Emergency Medical Services Providers shall submit the data to the Department electronically in the National Emergency Medical Services Information System (NEMSIS) format. For Emergency Medical Services Providers directly using a reporting system provided by the Department, the data is considered submitted to the Department as soon as it has been entered or updated in the Department-provided system.
- (3) Emergency Medical Services Providers shall submit NEMSIS Demographic data elements within 30 days after the end of each calendar quarter in the format defined in the NEMSIS EMSDemographicDataSet. Some data may change less frequently than quarterly, but Emergency Medical Services Providers shall submit all required data elements quarterly regardless of whether the data have changed.
- (4) Emergency Medical Services Providers shall submit NEMSIS EMS incident data elements for each Patient Care Report within 30 days of the end of the month in which the EMS incident occurred, in the format defined in the NEMSIS EMSDataSet.
- (5) If the Department determines that there are errors in the data, it may ask the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the supplier for corrections, the Emergency Medical Services Provider is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.
- (6) The minimum required demographic data elements that must be reported under this rule include the following NEMSIS EMSDemographicDataSet elements:

- D01\_01 EMS Agency Number
- D01\_02 EMS Agency Name
- D01\_03 EMS Agency State
- D01\_04 EMS Agency County
- D01\_05 Primary Type of Service
- D01\_06 Other Types of Service
- D01\_07 Level of Service
- D01\_08 Organizational Type

- D01\_09 Organization Status
- D01\_10 Statistical Year
- D01\_11 Other Agencies In Area
- D01\_12 Total Service Size Area
- D01\_13 Total Service Area Population
- D01\_14 911 Call Volume per Year
- D01\_15 EMS Dispatch Volume per Year
- D01\_16 EMS Transport Volume per Year
- D01\_17 EMS Patient Contact Volume per Year
- D01\_18 EMS Billable Calls per Year
- D01\_19 EMS Agency Time Zone
- D01\_20 EMS Agency Daylight Savings Time Use
- D01\_21 National Provider Identifier
- D02\_01 Agency Contact Last Name
- D02\_02 Agency Contact Middle Name/Initial
- D02\_03 Agency Contact First Name
- D02\_04 Agency Contact Address
- D02\_05 Agency Contact City
- D02\_06 Agency Contact State
- D02\_07 Agency Contact Zip Code
- D02\_08 Agency Contact Telephone Number
- D02\_09 Agency Contact Fax Number
- D02\_10 Agency Contact Email Address
- D02\_11 Agency Contact Web Address
- D03\_01 Agency Medical Director Last Name
- D03\_02 Agency Medical Director Middle Name/Initial
- D03\_03 Agency Medical Director First Name
- D03\_04 Agency Medical Director Address
- D03\_05 Agency Medical Director City
- D03\_06 Agency Medical Director State
- D03\_07 Agency Medical Director Zip Code
- D03\_08 Agency Medical Director Telephone Number
- D03\_09 Agency Medical Director Fax Number
- D03\_10 Agency Medical Director's Medical Specialty
- D03\_11 Agency Medical Director Email Address
- D04\_01 State Certification Licensure Levels
- D04\_02 EMS Unit Call Sign
- D04\_04 Procedures
- D04\_05 Personnel Level Permitted to Use the Procedure
- D04\_06 Medications Given
- D04\_07 Personnel Level Permitted to Use the Medication
- D04\_08 Protocol
- D04\_09 Personnel Level Permitted to Use the Protocol
- D04\_10 Billing Status
- D04\_11 Hospitals Served
- D04\_13 Other Destinations
- D04\_15 Destination Type
- D04\_17 EMD Vendor
- D05\_01 Station Name
- D05\_02 Station Number
- D05\_03 Station Zone
- D05\_04 Station GPS
- D05\_05 Station Address
- D05\_06 Station City
- D05\_07 Station State
- D05\_08 Station Zip
- D05\_09 Station Telephone Number
- D06\_01 Unit/Vehicle Number
- D06\_03 Vehicle Type
- D06\_07 Vehicle Model Year
- D07\_02 State/Licensure ID Number
- D07\_03 Personnel's Employment Status
- D08\_01 EMS Personnel's Last Name
- D08\_03 EMS Personnel's First Name
- (7) The minimum required Patient Care Report data elements that must be reported under this rule include the following NEMSIS EMSDataSet elements:
  - E01\_01 Patient Care Report Number
  - E01\_02 Software Creator

E01_03	Software Name	E09_13	Primary Symptom
E01_04	Software Version	E09_14	Other Associated Symptoms
E02_01	EMS Agency Number	E09_15	Providers Primary Impression
E02_02	Incident Number	E09_16	Provider's Secondary Impression
E02_04	Type of Service Requested	E10_01	Cause of Injury
E02_05	Primary Role of the Unit	E10_02	Intent of the Injury
E02_06	Type of Dispatch Delay	E10_03	Mechanism of Injury
E02_07	Type of Response Delay	E10_04	Vehicular Injury Indicators
E02_08	Type of Scene Delay	E10_05	Area of the Vehicle impacted by the collision
E02_09	Type of Transport Delay	E10_06	Seat Row Location of Patient in Vehicle
E02_10	Type of Turn-Around Delay	E10_07	Position of Patient in the Seat of the Vehicle
E02_12	EMS Unit Call Sign (Radio Number)	E10_08	Use of Occupant Safety Equipment
E02_20	Response Mode to Scene	E10_09	Airbag Deployment
E03_01	Complaint Reported by Dispatch	E10_10	Height of Fall
E03_02	EMD Performed	E11_01	Cardiac Arrest
E04_01	Crew Member ID	E11_02	Cardiac Arrest Etiology
E05_01	Incident or Onset Date/Time	E11_03	Resuscitation Attempted
E05_02	PSAP Call Date/Time	E11_04	Arrest Witnessed by
E05_03	Dispatch Notified Date/Time	E11_05	First Monitored Rhythm of the Patient
E05_04	Unit Notified by Dispatch Date/Time	E11_06	Any Return of Spontaneous Circulation
E05_05	Unit En Route Date/Time	E11_08	Estimated Time of Arrest Prior to EMS Arrival
E05_06	Unit Arrived on Scene Date/Time	E11_10	Reason CPR Discontinued
E05_07	Arrived at Patient Date/Time	E12_01	Barriers to Patient Care
E05_08	Transfer of Patient Care Date/Time	E12_08	Medication Allergies
E05_09	Unit Left Scene Date/Time	E12_14	Current Medications
E05_10	Patient Arrived at Destination Date/Time	E12_18	Presence of Emergency Information Form
E05_11	Unit Back in Service Date/Time	E12_19	Alcohol/Drug Use Indicators
E05_12	Unit Cancelled Date/Time	E12_20	Pregnancy
E05_13	Unit Back at Home Location Date/Time	E13_01	Run Report Narrative
E06_01	Last Name	E14_01	Date/Time Vital Signs Taken
E06_02	First Name	E14_02	Obtained Prior to this Units EMS Care
E06_03	Middle Initial/Name	E14_03	Cardiac Rhythm
E06_04	Patient's Home Address	E14_04	SBP (Systolic Blood Pressure)
E06_05	Patient's Home City	E14_05	DBP (Diastolic Blood Pressure)
E06_06	Patient's Home County	E14_07	Pulse Rate
E06_07	Patient's Home State	E14_09	Pulse Oximetry
E06_08	Patient's Home Zip Code	E14_10	Pulse Rhythm
E06_09	Patient's Home Country	E14_11	Respiratory Rate
E06_10	Social Security Number	E14_14	Blood Glucose Level
E06_11	Gender	E14_15	Glasgow Coma Score-Eye
E06_12	Race	E14_16	Glasgow Coma Score-Verbal
E06_13	Ethnicity	E14_17	Glasgow Coma Score-Motor
E06_14	Age	E14_18	Glasgow Coma Score-Qualifier
E06_15	Age Units	E14_19	Total Glasgow Coma Score
E06_16	Date of Birth	E14_20	Temperature
E06_17	Primary or Home Telephone Number	E14_22	Level of Responsiveness
E07_01	Primary Method of Payment	E14_24	Stroke Scale
E07_15	Work-Related	E14_26	APGAR
E07_16	Patient's Occupational Industry	E14_27	Revised Trauma Score
E07_17	Patient's Occupation	E14_28	Pediatric Trauma Score
E07_34	CMS Service Level	E15_01	NHTSA Injury Matrix External/Skin
E07_35	Condition Code Number	E15_02	NHTSA Injury Matrix Head
E08_05	Number of Patients at Scene	E15_03	NHTSA Injury Matrix Face
E08_06	Mass Casualty Incident	E15_04	NHTSA Injury Matrix Neck
E08_07	Incident Location Type	E15_05	NHTSA Injury Matrix Thorax
E08_11	Incident Address	E15_06	NHTSA Injury Matrix Abdomen
E08_12	Incident City	E15_07	NHTSA Injury Matrix Spine
E08_13	Incident County	E15_08	NHTSA Injury Matrix Upper Extremities
E08_14	Incident State	E15_09	NHTSA Injury Matrix Pelvis
E08_15	Incident ZIP Code	E15_10	NHTSA Injury Matrix Lower Extremities
E09_01	Prior Aid	E15_11	NHTSA Injury Matrix Unspecified
E09_02	Prior Aid Performed by	E16_01	Estimated Body Weight
E09_03	Outcome of the Prior Aid	E16_02	Broselow/Luten Color
E09_04	Possible Injury	E16_03	Date/Time of Assessment
E09_05	Chief Complaint	E16_04	Skin Assessment
E09_06	Duration of Chief Complaint	E16_05	Head/Face Assessment
E09_07	Time Units of Duration of Chief Complaint	E16_06	Neck Assessment
E09_11	Chief Complaint Anatomic Location	E16_07	Chest/Lungs Assessment
E09_12	Chief Complaint Organ System	E16_08	Heart Assessment

E16\_09 Abdomen Left Upper Assessment  
 E16\_10 Abdomen Left Lower Assessment  
 E16\_11 Abdomen Right Upper Assessment  
 E16\_12 Abdomen Right Lower Assessment  
 E16\_13 GU Assessment  
 E16\_14 Back Cervical Assessment  
 E16\_15 Back Thoracic Assessment  
 E16\_16 Back Lumbar/Sacral Assessment  
 E16\_17 Extremities-Right Upper Assessment  
 E16\_18 Extremities-Right Lower Assessment  
 E16\_19 Extremities-Left Upper Assessment  
 E16\_20 Extremities-Left Lower Assessment  
 E16\_21 Eyes-Left Assessment  
 E16\_22 Eyes-Right Assessment  
 E16\_23 Mental Status Assessment  
 E16\_24 Neurological Assessment  
 E18\_01 Date/Time Medication Administered  
 E18\_02 Medication Administered Prior to this Units EMS

## Care

E18\_03 Medication Given  
 E18\_04 Medication Administered Route  
 E18\_05 Medication Dosage  
 E18\_06 Medication Dosage Units  
 E18\_07 Response to Medication  
 E18\_08 Medication Complication  
 E18\_09 Medication Crew Member ID  
 E18\_10 Medication Authorization  
 E19\_01 Date/Time Procedure Performed Successfully  
 E19\_03 Procedure  
 E19\_04 Size of Procedure Equipment  
 E19\_05 Number of Procedure Attempts  
 E19\_06 Procedure Successful  
 E19\_07 Procedure Complication  
 E19\_08 Response to Procedure  
 E19\_09 Procedure Crew Members ID  
 E19\_10 Procedure Authorization  
 E19\_12 Successful IV Site  
 E19\_13 Tube Confirmation  
 E19\_14 Destination Confirmation of Tube Placement  
 E20\_01 Destination/Transferred To, Name  
 E20\_03 Destination Street Address  
 E20\_04 Destination City  
 E20\_05 Destination State  
 E20\_06 Destination County  
 E20\_07 Destination Zip Code  
 E20\_10 Incident/Patient Disposition  
 E20\_14 Transport Mode from Scene  
 E20\_15 Condition of Patient at Destination  
 E20\_16 Reason for Choosing Destination  
 E20\_17 Type of Destination  
 E22\_01 Emergency Department Disposition  
 E22\_02 Hospital Disposition  
 E23\_03 Personal Protective Equipment Used  
 E23\_09 Research Survey Field  
 E23\_10 Who Generated this Report?  
 E23\_11 Research Survey Field Title

(8) Emergency Medical Services Providers shall use elements E23\_09 and E23\_11 to report biosurveillance indicators. When any of the following indicators are present in an incident, the Emergency Medical Services Provider shall provide an instance of E23\_09 and E23\_11, with E23\_09 set to "true" and E23\_11 set to one of the following:

B01\_01 Abdominal Pain  
 B01\_02 Altered Level of Consciousness  
 B01\_03 Apparent Death  
 B01\_04 Bloody Diarrhea  
 B01\_05 Fever  
 B01\_06 Headache  
 B01\_07 Inhalation

B01\_08 Rash/Blistering  
 B01\_09 Nausea/Vomiting  
 B01\_10 Paralysis  
 B01\_11 Respiratory Arrest  
 B01\_12 Respiratory Distress  
 B01\_13 Seizures

(9) Emergency Medical Services Providers are not required to submit other NEMESIS data elements but may optionally do so. Emergency Medical Services Providers may also use additional instances of E23\_09 and E23\_11 for their own purposes.

(10) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, each responding emergency medical services provider unit that cared for the patient during the incident shall provide a report of patient status, containing information critical to the ongoing care of the patient, to the receiving facility within one hour after the patient arrives at the receiving facility in at least one of the following formats:

- (a) NEMESIS XML; or
- (b) Paper form.

(11) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, the receiving facility shall provide at least the following information to each Emergency Medical Services Provider that cared for the patient, upon request by the Emergency Medical Services Provider:

- (a) the patient's emergency department disposition; and
- (b) the patient's hospital disposition.

**R426-7-4. ED Data Set.**

(1) All hospitals licensed in Utah shall provide patient data as identified by the Department.

(2) This data shall be submitted at least quarterly to the Department. Corporate submittal is preferred.

(3) The data must be submitted in an electronic format determined and approved by the Department.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the hospital for corrections, the hospital is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:

Unique Patient Control Number  
 Record Type  
 Provider Identifier (hospital)  
 Patient Social Security Number  
 Patient Control Number  
 Type of Bill  
 Patient Name  
 Patient's Address (postal zip code)  
 Patient Date of Birth  
 Patient's Gender  
 Admission Date  
 Admission Hour  
 Discharge Hour  
 Discharge Status  
 Disposition from Hospital  
 Patient's Medical Record Number  
 Revenue Code 1 ("001" sum of all charges)  
 Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)  
 Revenue Code 2 ("450" used for record selection)  
 Total Charges by Revenue Code 2 (Charges associated with code 450)  
 Primary Payer Identification  
 Estimated Amount Due

Secondary Payer Identification  
Estimated Amount Due  
Tertiary Payer Identification  
Estimated Amount Due  
Patient Estimated Amount Due  
Principal Diagnosis Code  
Secondary Diagnosis Code 1  
Secondary Diagnosis Code 2  
Secondary Diagnosis Code 3  
Secondary Diagnosis Code 4  
Secondary Diagnosis Code 5  
Secondary Diagnosis Code 6  
Secondary Diagnosis Code 7  
Secondary Diagnosis Code 8  
External Cause of Injury Code (E-Code)  
Procedure Coding Method Used  
Principal Procedure  
Secondary Procedure 1  
Secondary Procedure 2  
Secondary Procedure 3  
Secondary Procedure 4, and  
Secondary Procedure 5

**R426-7-5. Penalty for Violation of Rule.**

As required by Section 63G-3-201(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty as provided in Section 26-23-6.

**KEY: emergency medical services****March 15, 2010****28-8a****Notice of Continuation January 24, 2006**

**R426. Health, Health Systems Improvement, Emergency Medical Services.****R426-12. Emergency Medical Services Training and Certification Standards.****R426-12-100. Authority and Purpose.**

This rule is established under Title 26, Chapter 8a to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and recertification of individuals who provide emergency medical service and for those providing instructions and training to pre-hospital emergency medical care providers.

**R426-12-101. Written and Practical Test Requirements.**

(1) The Department shall:

(a) develop written and practical tests for each certification; and

(b) establish the passing score for certification and recertification written and practical tests.

(2) The Department may administer the tests or delegate the administration of any test to another entity.

(3) The Department may release only to the individual who took the test and to persons who have a signed release from the individual who took the test:

(a) whether the individual passed or failed a written or practical test; and

(b) the subject areas where items were missed on a written or practical test.

**R426-12-102. Emergency Medical Care During Clinical Training.**

A student enrolled in a Department-approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course, perform activities delineated within the training curriculum that otherwise require certification to perform.

**R426-12-103. Certification at a Lower Level.**

(1) An individual who has taken an Emergency Medical Technician-Intermediate Advanced (EMT-IA) course, but has not been recommended for certification, may request to become certified at the Emergency Medical Technician-Intermediate (EMT-I) level if:

(a) the EMT-IA course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the EMT-I level as required by R426-12-300(2); and

(b) the individual successfully completes all requirements of R426-12-301, except for R426-12-301(2)(a).

(2) An individual who has taken a Paramedic course, but has not been recommended for certification, may request to become certified at the EMT-IA or EMT-I levels if:

(a) the paramedic course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the EMT-I level as required by R426-12-300(2) or the EMT-IA level as required by R426-12-400(2), as appropriate; and

(b) the individual successfully completes all requirements of:

(i) R426-12-301, except for R426-12-301(2)(a) for EMT-I;

or

(ii) R426-12-401, except for R426-12-401(2)(a) for EMT-IA respectively.

**R426-12-104. TB Test Requirements.**

All levels of certification and recertification must submit a statement from a physician or other health care provider, confirming the applicant's negative results of a Tuberculin Skin

Test or equivalent (TB test) examination conducted within the prior year, or complete the following requirements:

(1) If the test is positive, and there is no documented history of prior Latent TB Infection (LTBI) treatment, the applicant must see his primary care physician for a chest x-ray (CXR) in accordance with current Center for Disease Control and Prevention (CDC) guidelines and further evaluation. Results of CXR and medical history must be submitted to the Bureau.

(a) If the CXR is negative, the applicant's medical history will be reviewed by the State EMS Medical Director. For individuals at high risk for developing active TB, treatment will be strongly recommended.

(b) If the CXR is positive, the applicant is considered to be suspect Active TB. Should the diagnosis be confirmed, completion of treatment or release by an appropriate physician will be required prior to certification. Each such case will be reviewed by the State EMS Medical Director.

(c) In the event that an applicant who is required to get treatment refuses the treatment, BEMS may deny certification.

(2) A TB test should not be performed on a person who has a documented history of either a prior positive TB test or prior treatment for tuberculosis. The applicant must instead have a CXR in accordance with current CDC guidelines and provide documentation of negative CXR results to the Bureau.

(3) If the applicant has had prior treatment for active TB or LTBI, the applicant must provide documentation of this treatment prior to certification. Documentation of this treatment will be maintained by the Bureau, and needs only to be provided once. Each such case will be reviewed by the State EMS Medical Director.

**R426-12-200. Emergency Medical Technician-Basic (EMT-B) Requirements and Scope of Practice.**

(1) The Department may certify as an EMT-B an individual who meets the initial certification requirements in R426-12-201.

(2) The Committee adopts as the standard for EMT-Basic training and competency in the state, the following affective, cognitive and psychomotor objectives for patient care and treatment from the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum" (EMT-B Curriculum), which is incorporated by reference, with the exceptions of Module 8: Advanced Airway and Appendices C, D, J, and K.

(3) An EMT-B may perform the skills as described in the EMT-B Curriculum, as adopted in this section.

**R426-12-201. EMT-B Initial Certification.**

(1) The Department may certify an EMT-B for a four year period.

(2) An individual who wishes to become certified as an EMT-B must:

(a) successfully complete a Department-approved EMT-B course as described in R426-12-200(2);

(b) be able to perform the functions listed in the objectives of the EMT-B Curriculum adopted in R426-12-200(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives listed in the adopted EMT-B Curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-B certification;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation,



including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC);

(h) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-B course;

(i) within 120 days after the official course end date the applicant must successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

#### **R426-12-202. EMT-B Certification Challenges.**

(1) The Department may certify as an EMT-B, a registered nurse licensed in Utah, a physician assistant licensed in Utah, or a physician licensed in Utah who:

(a) is able to demonstrate knowledge, proficiency and competency to perform all the functions listed in the EMT-B Curriculum as verified by personal attestation and successful demonstration to a currently certified course coordinator and an off-line medical director of all cognitive, affective, and psychomotor skills and objectives listed in the EMT-B Curriculum;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols; and

(iii) the role and responsibilities of an EMT-B;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(d) is 18 years of age or older.

(2) To become certified, the applicant must:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit a favorable recommendation from a currently certified course coordinator attesting to competency of all knowledge and skills contained within the EMT-B Curriculum.

(c) submit the applicable fees and a completed application, including social security number, signature, and, proof of current Utah license as a Registered Nurse, a Physician Assistant, or a Medical Doctor;

(d) within 120 days after submitting the challenge application, successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary;

(e) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within 120 days was due to circumstances beyond the applicants control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years; and

(g) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within one

year prior to submitting the application.

#### **R426-12-203. EMT-B Reciprocity.**

(1) The Department may certify an individual as an EMT-B an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

#### **R426-12-204. EMT-B Recertification Requirements.**

(1) The Department may recertify an EMT-B for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC. CPR must be kept current during certification;

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination; and

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(f) provide documentation of completion of 98 hours of Department-approved CME meeting the requirements of subsections (3), (4), and (5).

(3) The EMT-B must take the following required CME hours by subject in accordance with the National EMS Education Standards. The hours must be completed throughout the prior four years:

(a) Preparatory - 4 hours;

(b) Anatomy and Physiology - 2 hours;

(c) Medical Terminology - 2 hours;

(d) Pathophysiology - 4 hours;

(e) Life Span Development - 2 hours;

(f) Public Health - 1 hour;

(g) Pharmacology - 3 hours;

(h) Airway Management, Respiration and Artificial Ventilation - 2 hours;

(i) Assessment - 12 hours;

(j) Medicine - 20 hours;

(k) Shock and Resuscitation - 2 hours;

(l) Trauma - 22 hours;

(m) Special Patient Populations - 7 hours;

(n) EMS Operations - 7 hours;

(o) CPR - 8 hours (two CPR renewal courses fulfill this requirement. CPR refresher courses can only be counted towards the CPR CME requirement.)

(4) An EMT-B may complete CME hours through methodologies, but 30 of the CME hours must be practical hands-on training. All CME must be related to the required skills and knowledge of an EMT. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction.

(5) The EMT-B must complete and document the psychomotor skills listed in the current National EMS Education Standards, on at least two separate occasions.

(6) An EMT-B who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMT-B's completion of the recertification requirements. An EMT-B who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(7) Each EMT-B is individually responsible to complete and submit the required recertification material to the Department. Each EMT-B should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMT-B's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(8) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMT-B; however, the EMT-B remains responsible for a timely and complete submission.

(9) The Department may shorten recertification periods. An EMT-B whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(10) The Department may not lengthen certification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

#### **R426-12-205. EMT-B Lapsed Certification.**

(1) An individual whose EMT-B certification has expired for less than one year may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become certified. The individual's new expiration date will be four years from the old expiration date.

(2) An individual whose certification has expired for more than one year must take an EMT-B course and reapply for initial certification.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMT until the individual completes the recertification process.

#### **R426-12-206. EMT-B Testing Failures.**

(1) An individual who fails any part of the EMT-B certification or recertification written or practical examination may retake the EMT-B examination twice without further

course work.

(2) If the individual fails both re-examinations, he must take a complete EMT-B training course to be eligible for further examination.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

#### **R426-12-300. Emergency Medical Technician-Intermediate (EMT-I) Requirements and Scope of Practice.**

(1) The Department may certify as an EMT-I, an EMT-B who meets the initial certification requirements in R426-12-301;

(2) The Committee adopts as the standard for EMT-I training and competency in the state the following affective, cognitive, and psychomotor objectives for patient care and treatment from the 1998 United States Department of Transportation's "Emergency Medical Technician-Intermediate Training Program: National Standard Curriculum" (EMT-I Curriculum): 1-1, 1-3, 1-4, 2-1, 3-2, 3-3, 3-5, 4-2, 5-1, 5-2, 5-3, 5-4, 5-5, 6-3, which is incorporated by reference, with the exception of the following objectives: 1-1.18-24, 1-1.54, 1-3.14-15, 1-3.17, 1-4.18, 1-4.24-25, 1-4.38, 2-1.7-8, 2-1.21, 2-1.33, 2-1.82-83, 2-1.92, 2-1.94, 2-1.96, 4-2.14-16, 5-1.3-5, 5-2.6-11, 5-2.13-14, 5-2.16-18, 5-2.20, 5-2.22-33, 5-2.39, 5-2.41, 5-2.44-46, 5-3.5-16, 5-4.3-5, 5-4.8-11, 5-5.3, 5-5.8-9, and 5-5.13,

(3) In addition to the skills that an EMT-B may perform, an EMT-I may perform the adopted skills described in section R426-12-300(2).

#### **R426-12-301. EMT-I Initial Certification.**

(1) The Department may certify an EMT-I for a four year period.

(2) An individual who wishes to become certified as an EMT-I must:

(a) successfully complete a Department-approved EMT-I course as described in R426-12-300(2);

(b) be able to perform the functions listed in the objectives of the EMT-I Curriculum adopted in R426-12-300(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives.

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-I certification;

(d) be currently certified as an EMT-B prior to the start of the Intermediate course;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced life support and maintain current status as set by the entity sponsoring the course;

(h) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-I course; and

(i) within 120 days after the official course end date the applicant must, successfully complete the Department written and practical EMT-I examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(4) If an individual's basic EMT certification lapses before he has completed all course requirements for an EMT-I, the individual must recertify as an EMT-B, including a practical test and CME documentation, before he can certify as an EMT-I. The individual may take the EMT-I written certification test to satisfy the written EMT-Basic recertification and EMT-I written certification requirements.

#### **R426-12-302. EMT-I Reciprocity.**

(1) The Department may certify as an EMT-I an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater to than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced life support and maintain current status as set by the entity sponsoring the course;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs;

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

#### **R426-12-303. EMT-I Recertification Requirements.**

(1) The Department may recertify an EMT-I for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced life support and maintain current status as set by the entity sponsoring the course. CPR, ACLS, and PEPP or PALS must be kept current during certification.

(d) submit a statement from the EMS provider organization or a physician, confirming the applicant's results of a TB examination

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(f) submit a letter from a certified off-line medical director

recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-I skills:

(i) initiating and terminating intravenous infusion;

(ii) completion of pediatric vascular access skills station;

(iii) insertion and removal of intraosseous needle;

(iv) insertion and removal of endotracheal tube;

(v) administration of medications via intramuscular, subcutaneous, and intravenous routes; and

(vi) EKG rhythm recognition; and

(g) provide documentation of completion of 100 hours of Department-approved CME meeting the requirements of subsections (3), (4), and (5).

(3) The EMT-I must take the following required CME hours by subject in accordance with the National EMS Education Standards. The hours must be completed throughout the prior four years.

(a) Preparatory - 5 hours;

(b) Anatomy and Physiology - 2 hours;

(c) Medical Terminology - 1 hours;

(d) Pathophysiology - 3 hours;

(e) Life Span Development - 1 hours;

(f) Public Health - 1 hour;

(g) Pharmacology - 2 hours;

(h) Airway Management, Respiration and Artificial Ventilation - 2 hours;

(i) Assessment - 10 hours;

(j) Medicine - 12 hours;

(k) Shock and Resuscitation - 2 hours;

(l) Trauma - 17 hours;

(m) Special Patient Populations - 3 hours;

(n) EMS Operations - 7 hours;

(o) Pediatric Advanced Life Support (PALS) or Pediatric Emergency Preparedness Program (PEPP) Course - 16 hours;

(p) Advanced Cardiac Life Support Course - 16 hours;

(q) CPR - 8 hours (two CPR renewal courses fulfill this requirement. CPR refresher courses can only be counted towards the CPR CME requirement.)

(4) An EMT-I may complete CME hours through different methodologies, but 35 of the CME hours must be practical hands-on training. All CME must be approved by the Department or CECBEMS. All CME must be related to the required skills and knowledge of an EMT. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction.

(5) The EMT-I must complete and document the psychomotor skills listed in the current National EMS Education Standards on at least two separate occasions.

(6) An EMT-I who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMT-I's completion of the recertification requirements. An EMT-I who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(7) Each EMT-I is individually responsible to complete and submit the required recertification material to the Department. Each EMT-I should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMT-I's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(8) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMT-I; however, the EMT-I remains responsible for a timely and complete submission.

(9) The Department may shorten recertification periods.

An EMT-I whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(10) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expires. If this happens, the individual shall recertify following Utah Code 39-1-64.

#### **R426-12-304. EMT-I Lapsed Certification.**

(1) An individual whose EMT-I certification has expired for less than one year, may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become certified. The individual's new expiration date will be four years from the individual's old expiration date.

(2) An individual whose certification has expired for more than one year must take the EMT-B and EMT-I courses and reapply for initial certification.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMT-I until the individual completes the recertification process.

#### **R426-12-305. EMT-I Testing Failures.**

(1) An individual who fails any part of the EMT-I certification or recertification written or practical examination may retake the EMT-I examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete EMT-I training course to be eligible for further examination.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

(4) If an EMT-I fails the recertification written test three times or the practical tests three times, he may request in writing, within 30 days of the date of the third failure notification letter, that he be allowed to apply for EMT-Basic recertification. The failed EMT-I cannot retake the EMT-I course until the failed EMT-I recertifies as an EMT-B. If he applies for EMT-Basic recertification in this circumstance, he has three opportunities to test to that level. The failed EMT-I must complete all recertification requirements at the EMT-B level within one year of the lapse of the EMT-I certification. If the requirements for the EMT-B certification are not completed within one year of the lapse of the EMT-I certification, the applicant must retake a complete EMT-Basic course.

#### **R426-12-400. Emergency Medical Technician-Intermediate Advanced (EMT-IA) Requirements and Scope of Practice.**

(1) The Department may certify as an EMT-IA, an EMT-B or an EMT-I who meets the initial certification requirements in R426-12-401;

(2) The Committee adopts as the standard for EMT-IA training and competency in the state the following affective, cognitive, and psychomotor objectives for patient care and treatment from the 1998 United States Department of Transportation's "Emergency Medical Technician-Intermediate Training Program: National Standard Curriculum" (EMT-I Curriculum) which is incorporated by reference, with the exception of the following objectives: 1-1.18-24,1-1.54,2-1.8, 2-1.31(f), 2-1.33, 2-1.75(c), (e), and (f), 6-3.1, 6-3.102-106.

(3) In addition to the skills that an EMT-B and an EMT-I may perform, an EMT-IA may perform the adopted skills

described in section R426-12-400(2).

#### **R426-12-401. EMT-IA Initial Certification.**

(1) The Department may certify an EMT-IA for a four-year period.

(2) An individual who wishes to become certified as an EMT-IA must:

(a) successfully complete a Department-approved EMT-IA course as described in R426-12-400(2);

(b) be able to perform the functions listed in the objectives of the EMT-I Curriculum adopted in R426-12-400(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-IA certification;

(d) be currently certified as an EMT-B or EMT-I prior to the start of the course;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(h) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year; and

(i) within 120 days after the official course end, the applicant must, successfully complete the Department written and practical EMT-IA examinations, or reexaminations, if necessary;

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(4) If an individual's basic EMT or intermediate EMT certification lapses before he has completed all course requirements for an EMT-IA, the individual must recertify at his current certification level, including a practical test and CME documentation, before he can certify as an EMT-IA. The individual may take the EMT-IA written certification test to satisfy the written EMT-Basic or EMT-Intermediate recertification and EMT-IA written certification requirements.

#### **R426-12-402. EMT-IA Reciprocity.**

(1) The Department may certify as an EMT-IA an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical EMT-IA examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

#### **R426-12-403. EMT-IA Recertification Requirements.**

(1) The Department may recertify an EMT-IA for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course; CPR, ACLS, and PALS/PEPP must be current during certification.

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination;

(e) successfully complete the Department applicable written and practical EMT-IA recertification examinations, or reexaminations, if necessary within one year prior to expiration;

(f) submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-IA skills:

- (i) initiating and terminating intravenous infusion;
- (ii) completion of pediatric vascular access skills station;
- (iii) insertion and removal of intraosseous needle;
- (iv) insertion and removal of endotracheal tube;
- (v) administration of medications via intramuscular, subcutaneous, and intravenous routes; and
- (vi) EKG rhythm recognition; and

(g) provide documentation of completion of 108 hours of Department-approved CME meeting the requirements of subsections (3), (4), and (5).

(3) The EMT-IA must take the following required CME hours by subject in accordance with the National EMS Education Standards. The hours must be completed throughout the prior four years.

- (a) Preparatory - 5 hours;
- (b) Anatomy and Physiology - 2 hours;
- (c) Medical Terminology - 1 hour;
- (d) Pathophysiology - 3 hours;
- (e) Life Span Development - 1 hour;
- (f) Public Health - 1 hour;
- (g) Pharmacology - 2 hours;
- (h) Airway Management, Respiration and Artificial Ventilation - 2 hours;
- (i) Assessment - 10 hours;
- (j) Medicine - 12 hours;
- (k) Shock and Resuscitation - 2 hours;

(l) Trauma - 17 hours;

(m) Special Patient Populations - 3 hours;

(n) EMS Operations - 7 hours;

(o) Pediatric Advanced Life Support (PALS) or Pediatric Emergency Preparedness Program (PEPP) Course - 16 hours;

(p) Advanced Cardiac Life Support Course - 16 hours;

(q) CPR - 8 hours (two CPR renewal courses fulfill this requirement. CPR refresher courses can only be counted towards the CPR CME requirement.)

(4) An EMT-IA may complete CME hours through different methodologies, but 35 of the CME hours must be practical hands-on training. All CME must be approved by the Department or CECBEMS. All CME must be related to the required skills and knowledge of an EMT-IA. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction.

(5) The EMT-IA must complete and document the psychomotor skills listed in the current National EMS Education Standards on at least two separate occasions.

(6) An EMT-IA who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMT-IA's completion of the recertification requirements. An EMT-IA who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(7) Each EMT-IA is individually responsible to complete and submit the required recertification material to the Department. Each EMT-IA should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMT-IA's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(8) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMT-IA; however, the EMT-IA remains responsible for a timely and complete submission.

(9) The Department may shorten recertification periods. An EMT-IA whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(10) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expires. If this happens, the individual shall recertify following Utah Code 39-1-64.

#### **R426-12-404. EMT-IA Lapsed Certification.**

(1) An individual whose EMT-IA certification has lapsed for less than one year, and who wishes to become recertified as an EMT-IA must complete all recertification requirements and pay a recertification late fee to become certified. The individual's new expiration date will be four years from the old expiration date.

(2) An individual whose EMT-IA certification has expired for more than one year, and who wishes to become recertified as a EMT-IA must:

(a) submit a completed application, including social security number and signature to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) submit to the Department evidence of having completed 100 hours of Department-approved continuing medical education within the prior four years following R426-

**12-403 EMT-IA Recertification Requirements;**

(d) submit a statement from a physician, confirming the applicant's results of a TB examination;

(e) submit verification of current completion of a Department-approved course in CPR, adult and pediatric advanced life support and maintain current status as set by the entity sponsoring the course;

(f) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in EMT-IA skills;

(g) successfully complete the applicable Department written and practical examinations; and

(h) pay all applicable fees.

(3) The individual's new expiration date will be four years from the completion of all recertification materials.

(4) An Individual whose certification has lapsed is not authorized to provide care as an EMT-IA until the individual completes the recertification process.

**R426-12-405. EMT-IA Testing Failures.**

(1) An individual who fails any part of the EMT-IA written or practical certification or recertification examination may retake the EMT-IA examination twice without further course work.

(2) If the individual fails on both re-examinations, he must take a complete EMT-IA training course to be eligible for further examination at the EMT-IA level.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written tests administered after completion of the new course.

(4) If an EMT-IA fails the recertification written test three times or the practical test three times, he may request in writing, within 30 days of the date of the third failure notification letter, that he be allowed to apply for EMT-I or EMT-B recertification. The failed EMT-IA cannot retake the EMT-IA course until the failed EMT-IA recertifies as an EMT-I or EMT-B. If he applies for EMT-Basic recertification in this circumstance, he has three opportunities to test to that level. The failed EMT-IA must complete all recertification requirements at the EMT-B or EMT-I level within one year of the lapse of the EMT-IA certification. If the requirements for the EMT-Basic or EMT-Intermediate recertification are not completed within one year of the lapse of the EMT-IA certification, the applicant must retake a complete EMT-Basic course.

**R426-12-500. Paramedic Requirements and Scope of Practice.**

(1) The Department may certify as a paramedic, an EMT-B, an EMT-I or an EMT-IA who meets the initial certification requirements in R426-12-501;

(2) The Committee adopts as the standard for paramedic training and competency in the state the following affective, cognitive and psychomotor objectives for patient care and treatment from the 1998 United States Department of Transportation's "EMT-Paramedic Training Program: National Standard Curriculum" (Paramedic Curriculum) which is incorporated by reference.

(3) In addition to the skills that an EMT-B, an EMT-I and an EMT-IA may perform, a Paramedic may perform the adopted skills described in section R426-12-500(2).

**R426-12-501. Paramedic Initial Certification.**

(1) The Department may certify a paramedic for a four year period.

(2) An individual who wishes to become certified must:

(a) successfully complete a Department-approved

Paramedic course as described in R426-12-500(2);

(b) be able to perform the functions listed in the objectives of the Paramedic Curriculum adopted in R426-12-500(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for paramedic certification;

(d) be currently certified as an EMT-B, EMT-I, or EMT-IA prior to the start of the course;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(h) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year; and

(i) within 120 days after the official end date, the applicant must, successfully complete the Department-approved written and practical paramedic examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

(4) If an individual's EMT-B, EMT-I, or EMT-IA certification lapses before he has completed all course requirements for a paramedic, the individual must recertify at his current certification level, including a practical test and CME documentation, before he can be certified as a paramedic. The individual may take the paramedic written test to satisfy the written EMT-Basic, EMT-Intermediate, or EMT-Intermediate Advanced recertification and paramedic written certification requirements.

**R426-12-502. Paramedic Reciprocity.**

(1) The Department may certify as a Paramedic an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in CPR, adult and pediatric advanced cardiac life support and maintain current status as set by the entity sponsoring the course;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the

prior year;

(e) successfully complete the Department written and practical Paramedic examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year.

(3) A candidate for paramedic reciprocity who fails the written or practical tests three times can request further consideration of reciprocity after five years if the candidate has worked for an out of state EMS provider and can verify steady employment as a paramedic for at least three of the five years.

#### **R426-12-503. Paramedic Recertification Requirements.**

(1) The Department may recertify a paramedic for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit verification of completion of a Department-approved course in Adult and Pediatric Advanced Cardiac Life Support;

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination;

(e) successfully complete the applicable Department paramedic recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(f) submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following paramedic skills:

- (i) initiating and terminating intravenous infusion;
- (ii) completion of pediatric vascular access skills station;
- (iii) insertion and removal of intraosseous needle;
- (iv) insertion and removal of endotracheal tube;
- (v) administration of medications via intramuscular, subcutaneous, and intravenous routes; and
- (vi) EKG rhythm recognition; and

(g) provide documentation of completion of 128 hours of Department-approved CME meeting the requirements of subsections (3), (4), and (5).

(3) The Paramedic must take the following required CME hours by subject in accordance with the National EMS Education Standards. The hours must be completed throughout the prior four years.

- (a) Preparatory - 5 hours;
- (b) Anatomy and Physiology - 3 hours;
- (c) Medical Terminology - 2 hours;
- (d) Pathophysiology - 3 hours;
- (e) Life Span Development - 1 hours;
- (f) Public Health - 1 hour;
- (g) Pharmacology - 2 hours;
- (h) Airway Management, Respiration and Artificial Ventilation - 2 hours;
- (i) Assessment - 10 hours;
- (j) Medicine - 23 hours;
- (k) Shock and Resuscitation - 3 hours;
- (l) Trauma - 23 hours;
- (m) Special Patient Populations - 3 hours;
- (n) EMS Operations - 7 hours;

(o) Pediatric Advanced Life Support (PALS) or Pediatric Emergency Preparedness Program (PEPP) Course - 16 hours;

(p) Advanced Cardiac Life Support Course - 16 hours;

(q) CPR - 8 hours (two CPR renewal courses fulfill this requirement. CPR refresher courses can only be counted towards the CPR CME requirement.)

(4) A Paramedic may complete CME hours through different methodologies, but 42 of the CME hours must be practical hands-on training. All CME must be approved by the Department or CECBEMS. All CME must be related to the required skills and knowledge of a paramedic. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction.

(5) The paramedic must complete and document the psychomotor skills listed in the current National EMS Education Standards on at least two separate occasions.

(6) A Paramedic who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the Paramedic's completion of the recertification requirements. A Paramedic who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(7) Each Paramedic is individually responsible to complete and submit the required recertification material to the Department. Each Paramedic should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the Paramedic's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(8) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of a Paramedic; however, the Paramedic remains responsible for a timely and complete submission.

(9) The Department may shorten recertification periods. A paramedic whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(10) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expires. If this happens, the individual shall recertify following Utah Code 39-1-64.

#### **R426-12-504. Paramedic Lapsed Certification.**

(1) An individual whose paramedic certification has lapsed for less than one year, and who wishes to become recertified as a paramedic must complete all recertification requirements and pay a recertification late fee.

(2) An individual whose paramedic certification has expired for more than one year, and who wishes to become recertified as a paramedic must:

(a) submit a completed application, including social security number and signature to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) submit to the Department evidence of having completed 128 hours of Department-approved continuing medical education within the prior four years, following R426-12-503 Paramedic Recertification Requirements;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination;

(e) submit verification of current completion of a Department-approved course in CPR, adult and pediatric

advanced life support;

(f) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in paramedic skills;

(g) successfully complete the applicable Department written and practical examinations; and

(h) pay all applicable fees.

(3) The individual's new expiration date will be four years from the completion of all recertification materials.

(4) An individual whose certification has lapsed is not authorized to provide care as a paramedic until the individual completes the recertification process.

#### **R426-12-505. Paramedic Testing Failures.**

(1) An individual who fails any part of the paramedic certification or recertification written or practical examination may retake the Paramedic examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete Paramedic course to be eligible for further examination at the paramedic level.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

(4) If a paramedic fails the recertification written or practical tests three times, he may request in writing, within 30 days of the date of the third failure notification letter, that he be allowed to apply for EMT-IA, EMT-I, or EMT-B certification. He has 120 days to complete recertification requirements at a lower level.

#### **R426-12-600. Emergency Medical Dispatcher (EMD) Requirements and Scope of Practice.**

(1) The Department may certify as an EMD an individual who meets the initial certification requirements in R426-12-601.

(2) The Committee adopts the 1995 United States Department of Transportation's "EMD Training Program: National Standard Curriculum" (EMD Curriculum) as the standard for EMD training and competency in the state, which is incorporated by reference.

(3) An EMD may perform the job functions as described in the EMD curriculum, as adopted in this section.

#### **R426-12-601. EMD Initial Certification.**

(1) The Department may certify an EMD for a four year period.

(2) An individual who wishes to become certified as an EMD must:

(a) successfully complete a Department-approved EMD course as described in R426-12-600(2);

(b) be able to perform the functions listed in the objectives of the EMD Curriculum adopted in R426-12-600(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective and psychomotor skills and objectives listed in the EMD Curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence and successful completion of all training requirements for EMD certification;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years; and;

(g) maintain and submit documentation of having completed a CPR course that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(h) within 120 days after the official course end date, the applicant must successfully complete the Department written and practical EMD examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

#### **R426-12-602. EMD Reciprocity.**

(1) The Department may certify as an EMD an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC;

(d) successfully complete the Department written and practical EMD examination, or re-examinations, if necessary;

(e) submit a current certification from one of the states of the United States or its possessions; and

(f) provide documentation of completion of 12 hours of continuing medical education within the prior year.

(3) The Department may certify as an EMD an individual certified by the National Academy of Emergency Medical Dispatch (NAEMD). An individual seeking reciprocity for certification in Utah based on NAEMD certification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within one year of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed within the prior two years:

(i) a CPR course that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(ii) a minimum of a two-hour course in critical incident stress management (CISM);

(d) submit documentation of current NAEMD certification.

#### **R426-12-603. EMD Recertification.**

(1) The Department may recertify an EMD for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the



Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC. CPR must be current during certification;

(d) successfully complete the applicable Department recertification examinations, or reexaminations if necessary, within one year prior to expiration of the certification to be renewed; and

(e) provide documentation of completion of 48 hours of Department-approved CME meeting the requirements of subsections (3), (4), and (5).

(3) The EMD must take the following CME hours by subject throughout each of the prior four years:

- (a) Roles and Responsibilities - 5 hours;
- (b) Obtaining Information from callers - 7 hours;
- (c) Resource allocation - 4 hours;
- (d) Providing emergency care instruction - 2 hours;
- (e) Legal and Liability Issues - 5 hours;
- (f) Critical Incident Stress Management - 5 hours;
- (g) Basic Emergency Medical Concepts - 5 hours; and
- (h) Chief complaint types - 7 hours.

(i) CPR - 8 hours. Two CPR courses fulfill this requirement. CPR refresher courses can only be counted towards CPR CME requirements.

(4) An EMD may complete CME hours through different methodologies, but 16 hours of the CME must be practical hands-on training. All CME must be approved by the Department or CECBEMS. All CME must be related to the required skills and knowledge of an EMD. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction.

(5) Notwithstanding the provisions of subsections (2), (3), and (4), an EMD who has been certified or recertified by the National Academy of Emergency Medical Dispatch (NAEMD) may be recertified by the Department upon the following conditions:

(a) the EMD must, as part of meeting the EMD's continuing medical education requirements, take a minimum of a two-hour course in critical incident stress management (CISM);

(b) an individual who takes a NAEMD course offered in Utah must successfully pass a class that follows the CISM section of the Department-established EMD curriculum; and

(c) the individual must:

(i) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(ii) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(iii) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(iv) submit documentation of current NAEMD certification.

(6) An EMD who is affiliated with an EMS organization should have the training officer from the EMS organization submit a letter verifying the EMD's completion of the recertification requirements. An EMD who is not affiliated with an EMS agency must submit verification of all recertification requirements directly to the Department.

(7) Each EMD is individually responsible to complete and submit the required recertification material to the Department.

Each EMD should submit all recertification materials to the Department at one time and no later than 30 days and no earlier than one year prior to the EMD's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(8) An EMS provider or an entity that provides CME may compile and submit recertification materials on behalf of an EMD; however, the EMD remains responsible for a timely and complete submission.

(9) The Department may shorten recertification periods. An EMD whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(10) The Department may not lengthen recertification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

#### **R426-12-604. EMD Lapsed Certification.**

(1) An individual whose EMD certification has expired for less than one year may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become recertified.

(2) An individual whose certification has expired for more than one year must take an EMD course and reapply for initial certification.

(3) The individual's new expiration date will be four years from the old expiration date.

(4) An individual whose certification has lapsed, is not authorized to provide dispatch services until he has completed the recertification process.

#### **R426-12-605. EMD Testing Failures.**

(1) An individual who fails any part of the EMD certification or recertification written or practical examination may retake the EMD examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete EMD training course to be eligible for further examination at the EMD level.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written tests administered after completion of the new course.

#### **R426-12-700. Emergency Medical Responder (EMR) Requirements and Scope of Practice.**

(1) The Department may certify as an EMR an individual who meets the initial certification requirements in R426-12-701.

(2) The Committee adopts as the standard for EMR training and competency in the state, the following affective, cognitive and psychomotor objectives for patient care and treatment from the current National Highway Traffic Safety Administration's National EMS Education Standards for EMR's, which is incorporated by reference.

(3) An EMR may perform the skills as described in the EMR Educational Standards, as adopted in this section.

#### **R426-12-701. EMR Initial Certification.**

(1) The Department may certify an EMR for a four year period.

(2) An individual who wishes to become certified as an EMR must:

(a) successfully complete a Department-approved EMR course as described in R426-12-700(2);

(b) be able to perform the functions listed in the objectives of the EMR Educational Standards adopted in R426-12-700(2) as verified by personal attestation and successful accomplishment during the course of all cognitive, affective, and psychomotor skills and objectives listed in the current National Highway Traffic Safety Administration's National EMS Education Standards for EMR's.

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMR certification;

(d) be 16 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(g) maintain and submit documentation of having completed a CPR provider course within the prior two years that is consistent with the most current version of the American Heart Association guidelines for CPR and Emergency Cardiac Care;

(h) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMR course;

(i) within 120 days after the official course end date the applicant must successfully complete the Department written and practical EMR examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(i) for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

#### **R426-12-702. EMR Reciprocity.**

(1) The Department may certify an individual as an EMR an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR provider course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and Emergency Cardiac Care;

(d) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(e) successfully complete the Department written and practical EMR examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and

the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 15 hours of continuing medical education (CME) within the prior year.

#### **R426-12-703. EMR Recertification Requirements.**

(1) The Department may recertify an EMR for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR provider course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC (Emergency Cardiac Care). CPR must be current during certification.

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination; and

(e) successfully complete the Department applicable recertification examinations, or reexaminations if necessary, within one year prior to expiration;

(f) provide documentation of completion of 58 hours of Department-approved CME meeting the requirements of subsections (3), (4), (5), and (6).

(3) The EMR must take at least the following required CME hours by subject in accordance with the National EMS Education Standards. The hours must be throughout the prior four years.

(a) Preparatory - 3 hours;

(b) Anatomy and Physiology - 1 hour;

(c) Medical Terminology - 1 hour;

(d) Pathophysiology - 2 hours;

(e) Life Span Development - 1 hour;

(f) Public Health - 30 minutes;

(g) Pharmacology - 2 hours;

(h) Airway Management, Respiration and Artificial Ventilation - 2 hours 30 minutes;

(i) Assessment - 4 hours 30 minutes;

(j) Medicine - 8 hours;

(k) Shock and Resuscitation - 1 hour;

(l) Trauma - 13 hours;

(m) Special Patient Populations - 4 hours;

(n) EMS Operations - 6 hours 30 minutes.

(4) An EMR may complete CME hours through different methodologies, but 17 of the CME hours must be practical hands-on training. All CME must be approved by the Department or the Continuing Education Coordinating Board for EMS (CECBEMS). All CME must be related to the required skills and knowledge of an EMR. Instructors need not be EMS instructors, but must be knowledgeable in the field of instruction.

(5) The EMR must complete and document the psychomotor skills listed in the current National EMS Education Standards at least two times as part of the CME training.

(6) An EMR who is affiliated with a Department-recognized organization should have a certified training officer from the organization submit a letter verifying the EMR's completion of the recertification requirements. An EMR who is not affiliated with a Department recognized agency must submit verification of all recertification requirements directly to the Department.

(7) Each EMR is individually responsible to complete and

submit the required recertification material to the Department. Each EMR should submit all recertification materials to the Department at one time, no later than 30 days and no earlier than one year prior to the EMR's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(8) A Department-recognized organization or an entity that provides CME may compile and submit recertification materials on behalf of an EMR; however, the EMR remains responsible for a timely and complete submission.

(9) The Department may shorten recertification periods. An EMR whose recertification period is shortened must meet the CME requirements in each of the required subdivisions on a prorated basis by the expiration of the shortened period.

(10) The Department may not lengthen certification periods more than the four year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

#### **R426-12-704. EMR Lapsed Certification.**

(1) An individual whose EMR certification has expired for less than one year may, within one year after expiration, complete all recertification requirements and pay a late recertification fee to become certified. The individual's new expiration date will be four years from the old expiration date.

(2) An individual whose certification has expired for more than one year must take an EMR course and reapply for initial certification.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMR until the individual has current certification.

#### **R426-12-705. EMR Testing Failures.**

(1) An individual who fails any part of the EMR certification or recertification written or practical examination may retake the EMR examination twice without further course work.

(2) If the individual fails both re-examinations, he must take a complete EMR training course to be eligible for further examination.

(3) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

#### **R426-12-800. Emergency Medical Services Instructor Requirements.**

(1) The Department may certify as an EMS Instructor an individual who:

(a) meets the initial certification requirements in R426-12-801; and

(b) is currently certified in Utah as an EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or Dispatcher.

(2) The Committee adopts the 1995 United States Department of Transportation's "EMS Instructor Training Program: National Standard Curriculum" (EMS Instructor Curriculum) as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the certification level to which the instructor is certified. An EMS instructor who is only certified as an EMD may only teach

EMD courses.

(4) An EMS instructor must abide by the terms of the "EMS Instructor Contract," teach according to the contract, and comply with the teaching standards and procedures in the EMS Instructor Manual or EMD Instructor Manual as incorporated into the respective "EMS Instructor Contract" or "EMD Instructor Contract."

(5) An EMS instructor must maintain the EMS certification for the level that the instructor is certified to teach. If an individual's EMS certification lapses, the instructor certification is invalid until EMS certification is renewed.

(6) The Department may waive a particular instructor certification requirement if the applicant can demonstrate that the applicant's training and experience requirements are equivalent or greater to what are required in Utah.

#### **R426-12-801. EMS Instructor Certification.**

(1) The Department may certify an individual who is an EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or EMD as an EMS Instructor for a two year period.

(2) An individual who wishes to become certified as an EMS Instructor must:

(a) submit an application and pay all applicable fees;

(b) submit three letters of recommendation regarding EMS skills and teaching abilities;

(c) submit documentation of 15 hours of teaching experience;

(d) successfully complete all required examinations;

(e) submit biennially a completed and signed "EMS Instructor Contract" to the Department agreeing to abide by the standards and procedures in the current EMS Instructor Manual or EMD Instructor Manual; and

(f) successfully complete the Department-sponsored initial EMS instructor training course.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMR, EMT-B, EMT-I, EMT-IA, or paramedic courses must also:

(a) provide documentation of 30 hours of patient care within the prior year; and

(b) submit verification that the individual is recognized as a CPR instructor by the National Safety Council, the American Red Cross, or the American Heart Association; and

(4) An individual who wishes to become certified as an EMS Instructor to teach EMD courses must also successfully complete the Department-sponsored initial EMS instructor training course.

(5) The Department may waive portions of the initial EMS instructor training courses for previously completed Department-approved instructor programs.

#### **R426-12-802. EMS Instructor Recertification.**

An EMS instructor who wishes to recertify as an instructor must:

(1) maintain current EMS certification;

(2) attend the required Department-approved recertification training;

(3) submit verification of 30 hours of EMS teaching experience in the prior two years;

(4) submit verification that the instructor is currently recognized as a CPR instructor by the National Safety Council, the American Red Cross, or the American Heart Association, if teaching an EMR, EMT-B, EMT-I, EMT-IA, or Paramedic course;

(5) submit an application and pay all applicable fees;

(6) successfully complete any Department-required examination; and

(7) submit biennially a completed and signed "EMS Instructor Contract" to the Department agreeing to abide by the standards and procedures in the current EMS Instructor Manual.

**R426-12-803. EMS Instructor Lapsed Certification.**

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements in R426-12-702.

(2) An EMS instructor whose instructor certification has expired for more than two years must complete all initial instructor certification requirements and reapply as if there were no prior certification.

**R426-12-900. Emergency Medical Services Training Officer Requirements.**

(1) The Department may certify as an EMS Training Officer an individual who:

(a) meets the initial certification requirements in R426-12-901; and

(b) is currently certified in Utah and has been certified as an EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or Dispatcher for 12 months.

(2) An EMS training officer must abide by the terms of the Training Officer Contract, and comply with the standards and procedures in the Training Officer Manual as incorporated into the respective Training Officer Contract.

**R426-12-901. EMS Training Officer Certification.**

(1) The Department may certify an individual who is certified as an EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or EMD as a training officer for a two year period.

(2) An individual who wishes to become certified as an EMS Training officer must:

(a) be currently certified as an EMS instructor;

(b) successfully complete the Department's course for new training officers;

(c) successfully complete any Department examinations;

(d) submit an application and pay all applicable fees; and

(e) submit biennially a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

(3) A training officer must maintain EMS instructor certification to retain training officer certification.

**R426-12-902. EMS Training Officer Recertification.**

A training officer who wishes to recertify as a training officer must:

(1) attend a training officer seminar every two years;

(2) maintain current EMS instructor and EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or EMD certification;

(3) submit an application and pay all applicable fees;

(4) successfully complete any Department-examination requirements; and

(5) submit biennially a completed and signed new "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the current training officer manual.

**R426-12-903. EMS Training Officer Lapsed Certification.**

(1) An individual whose training officer certification has expired for less than one year may again become certified by completing the recertification requirements in R426-12-902. The individual's new expiration date will be two years from the old expiration date.

(2) An individual whose training officer certification has expired for more than one year must complete all initial training officer certification requirements and reapply as if there were no prior certification.

**R426-12-1000. Course Coordinator Certification.**

(1) The Department may certify as a course coordinator an individual who:

(a) meets the initial certification requirements in R426-12-1001; and

(b) is certified in Utah as an EMS Instructor and as an EMR, EMT-B, EMT-I, EMT-IA, Paramedic or Dispatcher.

(2) A Course Coordinator may only coordinate courses up to the certification level to which the course coordinator is certified. A course coordinator who is only certified as an EMD, may only coordinate EMD courses.

(3) A course coordinator must abide by the terms of the "Course Coordinator Contract" and comply with the standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

(4) A Course Coordinator must maintain an EMS Instructor certification and the EMS certification for the level that the course coordinator is certified to coordinate. If an individual's EMS certification lapses, the Course Coordinator certification is invalid until EMS certification is renewed.

**R426-12-1001. Course Coordinator Certification.**

The Department may certify an individual who is an EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or EMD as a course coordinator for a two year period. An individual who wishes to certify as a course coordinator must:

(1) be certified as an EMS instructor for one year;

(2) be an instructor of record for at least one Department-approved course;

(3) have taught a minimum of 15 hours in a Department-approved course;

(4) have co-coordinated one Department-approved course with a certified course coordinator;

(5) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;

(6) complete certification requirements prior to application to the Department's course for new course coordinators;

(7) submit an application and pay all applicable fees;

(8) complete the Department's course for new course coordinators;

(9) successfully complete all examination requirements;

(10) sign and submit annually the "Course Coordinator Contract" to the Department agreeing to abide to the standards and procedures in the then current Course Coordinator Manual; and

(11) maintain EMS instructor certification.

**R426-12-1002. Course Coordinator Recertification.**

A course coordinator who wishes to recertify as a course coordinator must:

(1) maintain current EMS instructor and EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or EMD certification;

(2) coordinate or co-coordinate at least one Department-approved course every two years;

(3) attend a course coordinator seminar every two years;

(4) submit an application and pay all applicable fees;

(5) successfully complete all examination requirements; and

(6) sign and submit biennially a Course Coordinator Contract to the Department agreeing to abide by the policies and procedures in the then current Course Coordinator Manual.

**R426-12-1003. Emergency Medical Services Course Coordinator Lapsed Certification.**

(1) An individual whose course coordinator certification has expired for less than one year may again become certified by completing the recertification requirements in R426-12-1002. The individual's new expiration date will be two years from the old expiration date.

(2) An individual whose course coordinator certification has expired for more than one year must complete all initial course coordinator certification requirements and reapply as if

there were no prior certification.

**R426-12-1100. Paramedic Training Institutions Standards Compliance.**

(1) A person must be authorized by the Department to provide training leading to the certification of a paramedic.

(2) To become authorized and maintain authorization to provide paramedic training, a person must:

(a) enter into the Department's standard paramedic training contract; and

(b) adhere to the terms of the contract, including the requirement to provide training in compliance with the Course Coordinator Manual and the Utah Paramedic Training Program Accreditation Standards Manual.

**R426-12-1200. Course Approvals.**

A course coordinator offering EMS training to individuals who wish to become certified as an EMR, EMT-B, EMT-I, EMT-IA, Paramedic, or EMD, must obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(1) the applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(2) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(3) the Department finds that the course meets all the Department rules and contracts governing training;

(4) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(5) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

**R426-12-1300. Off-line Medical Director Requirements.**

(1) The Department may certify an off-line medical director for a four year period.

(2) An off-line medical director must be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required under "R426 Equipment, Drugs and Supplies List."

**R426-12-1301. Off-line Medical Director Certification.**

(1) An individual who wishes to certify as an off-line medical director must:

(a) have completed an American College of Emergency Physicians or National Association of Emergency Medical Services Physicians medical director training course or the Department's medical director training course within twelve months of becoming a medical director;

(b) submit an application and;

(c) pay all applicable fees.

(2) An individual who wishes to recertify as an off-line medical director must:

(a) retake the medical director training course every four years;

(b) submit an application; and

(c) pay all applicable fees.

**R426-12-1400. Refusal, Suspension or Revocation of Certification.**

(1) The Department shall exclude from EMS certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The

Department shall conduct a background check on each individual who seeks to certify or recertify as an EMS personnel, including an FBI background investigation if not a Utah resident for the past consecutive five years;

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification from individuals convicted of any of the following crimes:

(i) sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

(ii) sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person;

(iii) abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility; and

(iv) crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree; or arson; or attempts to commit such crimes;

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole;

(ii) conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) crimes of violence against persons, such as assault;

(B) crimes defined as domestic violence under Section 77-36-1;

(C) crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(D) crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department may deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) the seriousness of the crime;

(ii) whether the crime relates directly to the skills of pre-hospital care service and the delivery of patient care;

(iii) the amount of time that has elapsed since the crime was committed;

(iv) whether the crime involved violence to or abuse of another person;

(v) whether the crime involved a minor or a person of diminished capacity as a victim;

(vi) whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust;

(vii) the total number of arrests and convictions; and

(viii) whether the applicant was truthful regarding the crime on his or her application.

(2) Certified EMS personnel must notify the Department of any arrest, charge, or conviction within seven days of the arrest, charge or conviction. If the person works for a licensed or designated EMS agency, the agency is also responsible to

inform the Bureau of the arrest, charge or conviction.

(3) An official EMS agency representative verified by the Supervisor of the agency, may receive information pertaining to Department actions about an employee or a potential employee of the agency if a Criminal History Non-Disclosure Agreement is signed by the EMS agency representative.

(4) The Department may require EMS personnel to submit to a background examination or a drug test upon Department request.

(5) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification, or place a certification on probation, for any of the following causes:

(a) any of the reasons for exclusion listed in Subsection (1);

(b) a violation of Subsection (2);

(c) a refusal to submit to a background examination pursuant to Subsection (3);

(d) habitual or excessive use or addiction to narcotics or dangerous drugs;

(e) refusal to submit to a drug test administered by the individual's EMS provider organization or the Department;

(f) habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMS personnel or while driving any Department-permitted vehicle;

(g) failure to comply with the training, certification, or recertification requirements for the certification;

(h) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator;

(i) fraud or deceit in applying for or obtaining a certification;

(j) fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as a certified individual;

(k) unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or agency licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) conviction of a felony, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions;

(o) mental incompetence as determined by a court of competent jurisdiction;

(p) demonstrated inability and failure to perform adequate patient care;

(q) inability to provide emergency medical services with reasonable skill and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated; and

(r) misrepresentation of an individual's level of certification;

(s) failure to display a state-approved emblem with level of certification during an EMS response, and

(t) other or good cause, including conduct which is unethical, immoral, or dishonorable to the extent that the conduct reflects negatively on the EMS profession or might cause the public to lose confidence in the EMS system.

(6)(a) The Department may suspend an individual for a felony or misdemeanor arrest or charge pending the resolution of the charge if the nature of the charge is one that, if true, the Department could revoke the certification under subsection (1); and

(b) The Department may order EMS personnel not to practice when an active criminal or administrative investigation is being conducted.

**R426-12-1500. Penalties.**

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: emergency medical services**

**March 15, 2010**

**Notice of Continuation July 29, 2009**

**26-8a-302**

**R426. Health, Health Systems Improvement, Emergency Medical Services.****R426-14. Ambulance Service and Paramedic Service Licensure.****R426-14-100. Authority and Purpose.**

This rule is established under Title 26, Chapter 8a. It establishes standards for the licensure of ambulance and paramedic services.

**R426-14-101. Requirement for Licensure.**

A person or entity that provides or represents that it provides ambulance or paramedic services must first be licensed by the Department.

**R426-14-200. Licensure Types.**

The Department issues licenses for a type of service at a certain service level.

(1) The Department may issue ambulance licenses for the following types of service at the given levels:

- (a) Basic;
- (b) Intermediate;
- (c) Intermediate Advanced; and
- (d) Paramedic.

(2) The Department may issue ground ambulance inter-facility transfer licenses for the following types of service at the given levels:

- (a) Basic;
- (b) Intermediate;
- (c) Intermediate Advanced; and
- (d) Paramedic.

(3) The Department may issue paramedic, non-transport licenses for the following types of service at the given response configurations:

- (a) Paramedic Rescue; and
- (b) Paramedic Tactical Rescue.

**R426-14-201. Scope of Operations.**

(1) A licensee may only provide service to its specific licensed geographic service area and is responsible to provide service to its entire specific geographic service area. It may provide emergency medical services for its category of licensure that corresponds to the certification levels in R426-12 Emergency Medical Services Training and Certification Standards.

(2) A licensee may not subcontract. A subcontract is present if a licensee engages a person that is not licensed to provide emergency medical services to all or part of its specific geographic service area. A subcontract is not present if multiple licensees allocate responsibility to provide ambulance services between them within a specific geographic service area for which they are licensed to provide ambulance service.

(3) A ground ambulance inter-facility transfer licensee may only transport patients from a hospital, nursing facility, emergency patient receiving facility, mental health facility, or other medical facility when arranged by the transferring physician for the particular patient.

**R426-14-300. Minimum Licensure Requirements.**

(1) A licensee must meet the following minimum requirements:

(a) have sufficient ambulances, emergency response vehicles, equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensees;

(b) have locations or staging areas for stationing its vehicles;

(c) have a current written dispatch agreement with a public safety answering point that answers and responds to 911 or

E911 calls, or with a local single access public safety answering point that answers and responds to requests for emergency assistance;

(d) have current written aid agreements with other licensees to give assistance in times of unusual demand;

(e) have a Department certified EMS training officer;

(f) have a current plan of operations, which shall include:

(i) a business plan demonstrating its:

(A) ability to provide the service; and

(B) financial viability.

(ii) the number, training, and certification of personnel;

(iii) operational procedures; and

(iv) a description of the how the licensee or applicant proposes to interface with other EMS agencies;

(g) have sufficient trained and certified staff that meet the requirements of R426-15 Licensed and Designated Provider Operations;

(h) have a current written agreement with a Department-certified off-line medical director;

(i) have current treatment protocols approved by the agency's off-line medical director for the existing service level or new treatment protocols if seeking approval under 26-8a-405;

(j) be able to pay its debts as they become due;

(k) provide the Department with a copy of its certificate of insurance or if seeking application approval under 26-8a-405, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle in the manner and minimum amounts specified in R426-15-204. All licensees shall:

(i) obtain insurance from an insurance carrier authorized to write liability coverage in Utah or through a self-insurance program;

(ii) report any coverage change to the Department within 60 days after the change; and

(iii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage.

(l) not be disqualified for any of the following reasons:

(i) violation of Subsection 26-8a-504; or

(ii) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license.

(2) A paramedic tactical rescue must be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical rescue's geographic service area.

**R426-14-301. Application, Department Review, and Issuance.**

(1) An applicant desiring to be licensed or to renew its license shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-14-300 and the following:

(a) a detailed description and detailed map of the exclusive geographical area that it will serve;

(i) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(ii) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions of all geographical areas served in accordance with 26-8a-405.2 (2).

(b) for an applicant for a new service, documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(c) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(d) for renewal applications, a written assessment of field performance from the applicant's off-line medical director; and

(e) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(2) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of a special district or unified fire authority holding such a license, may respond to a request for proposal if it complies with 26-8a-405(2).

(3) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;

(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2);

(c) issue a license to an applicant selected by a political subdivision in accordance with 26-8a-405.1(3);

(d) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certifies to the Department that the licensee has met all of the specifications of the original bid and requirements of 26-8a-413(1) through (3); or

(e) issue a second four-year renewal license to a licensee selected by a political subdivision if:

(i) the political subdivision certifies to the Department that the licensee has met all of the specifications of the original bid and requirements of 26-8a-413(1) through (3); and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(4) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statutes and rules and a successful Department quality assurance review.

(5) A license may be issued for up to a four-year period. The Department may alter the length of the license to standardize renewal cycles.

(6) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

#### **R426-14-302. Selection of a Provider by Public Bid.**

(1) A political subdivision that desires to select a provider through a public bid process as provided in 26-8a-405.1, shall submit its draft request for proposal to the Department in accordance with 26-8a-405.2(2), together with a cover letter listing all contact information. The proposal shall include all the criteria listed in 26-8a-405.1 and 405.2.

(2) The Department shall, within 14 business days of receipt of a request for proposal from a political subdivision, review the request according to 26-8a-405.2(2) and:

(a) approve the proposal by sending a letter of approval to the political subdivision;

(b) require the political subdivision to alter the request for proposal to meet statutory and rule requirements; or

(c) deny the proposal by sending a letter detailing the reasons for the denial and process for appeal.

#### **R426-14-303. Application Denial.**

(1) The Department may deny an application for a license or a renewal of a license without reviewing whether a license must be granted or renewed to meet public convenience and

necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) financial insolvency;

(k) failure to submit records and other data to the Department as required by R426-7;

(l) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(m) misuse of grant funds received under Section 26-8a-207; and

(n) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant that has been denied a license may appeal by filing a written appeal within thirty calendar days of the issuance of the Department's denial.

#### **R426-14-400. Change in Service Level.**

(1) A ground ambulance service licensee may apply to provide a higher level of non-911 ambulance or paramedic service. The applicant shall submit:

(a) the applicable fees; and

(b) an application on Department-approved forms to the Department.

(c) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(d) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service; and

(e) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director.

(2) If the Department determines that the applicant has demonstrated the ability to provide the higher level of service, it shall issue a revised license reflecting the higher level of service without making a separate finding of public convenience and necessity.

#### **R426-14-401. Change of Owner.**

A license and the vehicle permits terminate if the holder of a licensed service transfers ownership of the service to another party. As outlined in 26-8a-415, the new owner must submit, within ten business days of acquisition, applications and fees for a new license and vehicle permits.

#### **R426-14-500. Aid Agreements.**

(1) A ground ambulance service must have in place aid agreements with other ground ambulance services to call upon them for assistance during times of unusual demand.

(2) Aid agreements shall be in writing, signed by both parties, and detail the:



- (a) purpose of the agreement;
- (b) type of assistance required;
- (c) circumstances under which the assistance would be given; and
- (d) duration of the agreement.

(3) The parties shall provide a copy of the aid agreement to the emergency medical dispatch centers that dispatch the licensees.

(4) A ground ambulance licensee must provide all ambulance service, including standby services, for any special event that requires ground ambulance service within its geographic service area. If the ground ambulance licensee is unable or unwilling to provide the special event coverage, the licensee may arrange with a ground ambulance licensee through the use of aid agreements to provide all ground ambulance service for the special event.

**R426-14-600. Penalties.**

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: emergency medical services**

**March 15, 2010**

**Notice of Continuation July 28, 2009**

**26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.****R426-15. Licensed and Designated Provider Operations.****R426-15-100. Authority and Purpose.**

This rule is established under Title 26, Chapter 8a. It establishes standards for the operation of EMS providers licensed or designated under the provisions of the Emergency Medical Services System Act.

**R426-15-200. Staffing.**

(1) EMT ground ambulances, while providing ambulance services, shall have the following minimum complement of personnel:

(a) two attendants, each of whom is a certified EMT-Basic, EMT-Intermediate, EMT-Intermediate Advanced, or Paramedic.

(b) a driver, 18 years of age or older, who is the holder of a valid driver's license. If the driver is also an EMT-Basic, EMT-Intermediate, EMT-Intermediate Advanced, or Paramedic, the driver qualifies as one of the two required attendants.

(c) EMT ground ambulance services authorized by the Department to provide Intermediate or Intermediate Advanced services shall assure that at least one EMT-Intermediate or EMT-Intermediate Advanced responds on each call along with another certified EMT.

(d) if on-line medical control determines the condition of the patient to be "serious or potentially critical," at least one paramedic shall accompany the patient on board the ambulance to the hospital, if a Paramedic rescue is on scene.

(e) if on-line medical control determines the condition of the patient to be "critical," the ambulance driver and two Paramedics shall accompany the patient on board the ambulance to the hospital, if Paramedics are on scene.

(2) Quick response units, while providing services, shall have the following minimum complement of personnel:

(a) one attendant, who is an EMT-Basic, EMT-Intermediate, EMT-Intermediate Advanced, or Paramedic.

(b) quick response units authorized by the Department to provide Intermediate services shall assure that at least one EMT-Intermediate, EMT Intermediate Advanced or Paramedic responds on each call.

(3) Paramedic ground ambulance or rescue services shall have the following minimum complement of personnel:

(a) staffing at the scene of an accident or medical emergency shall be no less than two persons, each of whom is a Paramedic;

(b) a paramedic ground ambulance service, while providing paramedic ambulance services, shall have:

(i) a driver, 18 years of age or older, who is the holder of a valid driver's license;

(ii) if on-line medical control determines the condition of the patient as "serious or potentially critical," a minimum staffing of one Paramedic, and one EMT-Basic, EMT-Intermediate, or EMT Intermediate Advanced; and

(iii) if on-line medical control determines the condition of the patient as "critical," a minimum staffing of an ambulance driver and two Paramedics.

(4) Paramedic inter-facility transfer services shall have the following minimum complement of personnel:

(a) if the physician describes the condition of the patient as "serious or potentially critical," minimum staffing shall be one Paramedic, and one EMT-Basic, EMT-Intermediate, or EMT-Intermediate Advanced;

(b) if the physician describes the condition of the patient as "critical," minimum staffing shall be two Paramedics and an ambulance driver.

(5) Each licensee shall maintain a personnel file for each certified individual. The personnel file must include records documenting the individual's qualifications, training,

certification, immunizations, and continuing medical education.

(6) An EMT or Paramedic may only perform to the service level of the licensed or designated service, regardless of the certification level of the EMT or Paramedic.

**R426-15-201. Vehicle Permit.**

(1) EMS provider organizations that operate vehicles that Section 26-8a-304 requires to have a permit must annually obtain a permit and display a permit decal for each of its vehicles used in providing the service.

(2) The Department shall issue annual permits for vehicles used by licensees only if the new or replacement ambulance meets the:

(a) Federal General Services Administration Specification for ground ambulances as of the date of manufacture; and

(b) equipment and vehicle supply requirements.

(3) The Department may give consideration for a variance from the requirements of Subsection (2) to communities with limited populations or unique problems for purchase and use of ambulance vehicles.

(4) The permittee shall display the permit decal showing the expiration date and number issued by the Department on a publicly visible place on the vehicle.

(5) Permits and decals are not transferrable to other vehicles.

**R426-15-202. Permitted Vehicle Operations.**

(1) Ambulance licensees shall notify the Department of the permanent location or where the vehicles will be staged if using staging areas. The licensee shall notify the Department in writing whenever it changes the permanent location for each vehicle.

(2) Vehicles shall be maintained on a premises suitable to make it available for immediate use, in good mechanical repair, properly equipped, and in a sanitary condition.

(3) Each ambulance shall be maintained in a clean condition with the interior being thoroughly cleaned after each use in accordance with OSHA standards.

(4) Each ambulance shall be equipped with adult and child safety restraints and to the point practicable all occupants must be restrained.

**R426-15-203. Vehicle Supply Requirements.**

(1) In accordance with the licensure or designation type and level, the permittee shall carry on each permitted vehicle the minimum quantities of supplies, medications, and equipment as described in this subsection. Optional items are marked with an asterisk.

**EQUIPMENT AND SUPPLIES FOR BASIC QUICK RESPONSE**

2 Blood pressure cuffs, one adult, one pediatric  
2 Stethoscopes, one adult and one pediatric or combination

2 Heavy duty shears  
2 Universal sterile dressings, 9"x5", 10"x8", 8"x9", or equivalent

12 Gauze pads, sterile, 4"x4"  
8 Bandages, self-adhering, soft roller type, 4"x5 yards or equivalent

2 Rolls of tape  
4 Cervical collars, one adult, one child, one infant, plus one other size

2 Triangular bandages  
2 Boxes of gloves, one box non-sterile and one box latex free or equivalent

1 Portable jump kit stocked with appropriate medical supplies

**AIRWAY EQUIPMENT AND SUPPLIES**

1 Portable or fixed suction, with wide bore tubing and

## rigid pharyngeal suction tip

2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks

1 Baby syringe, bulb type, separate from the OB kit

3 Oropharyngeal airways, with one adult, one child, and one infant size

3 Nasopharyngeal airways, one adult, one child, and one infant

2 Non-rebreather or partial non-rebreather oxygen masks, one adult and one pediatric

1 Nasal cannula, adult

1 Portable oxygen apparatus, capable of metered flow with adequate tubing

## AUTOMATIC DEFIBRILLATOR EQUIPMENT AND SUPPLIES

1 Defibrillator, automatic portable battery operated, per vehicle or response unit

2 Sets of electrode pads for defibrillation

## REQUIRED DRUGS

650mg Aspirin

2 Epinephrine auto-injectors, one standard and one junior (Preloaded syringes with age appropriate dosage of epinephrine 1:1000 is an acceptable substitute for auto-injectors)

2 Concentrated oral glucose tubes or equivalent

50 Grams Activated Charcoal

## OPTIONAL DRUGS

Acetaminophen elixir 160mg/5ml

Nerve Antidote Kits (Mark I Kits or DuoDote)

## EQUIPMENT AND SUPPLIES FOR AN INTERMEDIATE QUICK RESPONSE

2 Blood pressure cuffs, one adult, one pediatric

2 Stethoscopes, one adult and one pediatric or combination

2 Heavy duty shears

2 Universal sterile dressings, 9"x5", 10"x8", 8"x9", or equivalent

12 Gauze pads, sterile, 4"x4"

8 Bandages, self-adhering, soft roller type, 4"x5 yards or equivalent

2 Rolls of tape

4 Cervical collars, one adult, one child, one infant, plus one other size

2 Triangular bandages

2 Boxes of gloves, one box non-sterile and one box latex free or equivalent

2 Concentrated oral glucose tubes or equivalent

1 Portable jump kit stocked with appropriate medical supplies

1 Glucose measuring device

## AIRWAY EQUIPMENT AND SUPPLIES

1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip

2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks

1 Baby syringe, bulb type, separate from the OB kit

3 Oropharyngeal airways, with one adult, one child, and one infant size

3 Nasopharyngeal airways, one adult, one child, and one infant

2 O2 masks, non-rebreather or partial non-rebreather, one adult and one pediatric

1 Nasal cannula, adult

1 Portable oxygen apparatus, capable of metered flow with adequate tubing

2 Small volume nebulizer container for aerosol solutions

1 Laryngoscope with batteries curved and straight blades with bulbs and two extra batteries and two extra bulbs\*

1 Water based lubricant, one tube or equivalent\*

7 Endotracheal tubes, one each: cuffed 8, 7.5, 7, 6, uncuffed 5, 4, 3\*

2 Stylets, one adult and one pediatric\*

1 Device for securing the endotracheal tube\*

2 Endotracheal tube confirmation device\*

2 Flexible sterile endotracheal suction catheters from 5-12 french\*

2 Oro-nasogastric tubes, one adult, and one pediatric \*

## AUTOMATIC DEFIBRILLATOR EQUIPMENT AND SUPPLIES

1 Defibrillator, automatic portable battery operated, per vehicle or response unit

2 Sets of electrode pads for defibrillation

## IV SUPPLIES

10 Alcohol or Iodine preps

2 IV start kits or equivalent

12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g and 24g

2 Arm boards, two different sizes

2 IV tubings with micro drip chambers

3 IV tubings with standard drip chambers

5 Extension tubings

4 Syringes, one 30 or 60cc, one 10cc, one 5cc, and one

3cc

1 Sharps container

1 Safety razor

1 Vacutainer holder

4 Vacutainer tubes

## REQUIRED DRUGS

2 25gm Activated Charcoal

1 2.5gm premixed Albuterol Sulfate

2 Atropine Sulfate 1mg each

2 25gm preload Dextrose 50% or Glucagon (must have at least 1 D50)

1 1cc (1mg/1cc) Epinephrine 1:1,000

2 Epinephrine 1:10,000 1mg each

2 Naloxone HCL 2mg each

1 bottle 0.4mg Nitroglycerine (tablets or spray)

650mg Aspirin

4,000cc Ringers Lactate or Normal Saline

## OPTIONAL DRUGS

Acetaminophen elixir 160mg/5ml

Nerve Agent Antidote kits (Mark I Kits or DuoDote)

CyanoKit

## EQUIPMENT AND SUPPLIES FOR A BASIC AMBULANCE

2 Blood pressure cuffs, one adult, one pediatric

2 Stethoscopes, one adult and one pediatric or combination

2 Pillows, with vinyl cover or single use disposable pillows

2 Emesis basins, emesis bags, or large basins

1 Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds

2 Head immobilization devices or equivalent

2 Lower extremity traction splints or equivalent, one adult and one pediatric

2 Non-traction extremity splints, one upper, one lower, or

PASG pants

2 Spine boards, one short and one long (Wood must be coated or sealed)

2 Heavy duty shears

2 Urinals, one male, one female, or two universal

1 Printed Pediatric Reference Material

2 Blankets

2 Sheets

6 Towels

2 Universal sterile dressings, 9"x5", 10"x8", 8"x9", or equivalent

12 Gauze pads, sterile, 4"x4"

8 Bandages, self-adhering, soft roller type, 4"x5 yards or equivalent  
 2 Rolls of tape  
 4 Cervical collars, one adult, one child, one infant, plus one other size  
 2 Triangular bandages  
 2 Boxes of gloves, one box non-sterile and one box latex free or equivalent  
 1 Obstetrical kit, sterile  
 2 Occlusive sterile dressings or equivalent  
 1 Car seat, approved by Federal Safety standard  
 1 Portable jump kit stocked with appropriate medical supplies  
 2 Preventive T.B. transmission masks  
 2 Protective eye wear (goggles or face shields)  
 2 Full body substance isolation protection, or one for each crew member  
 1 Thermometer or equivalent  
 1 Water based lubricant, one tube or equivalent  
 2 Biohazard bags  
 1 Disinfecting agent for cleaning vehicle and equipment of body fluids  
 1 Glucose measuring device  
**AIRWAY EQUIPMENT AND SUPPLIES**  
 1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip  
 2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks  
 1 Baby syringe, bulb type, separate from the OB kit  
 3 Oropharyngeal airways, with one adult, one child, and one infant size  
 3 Nasopharyngeal airways, one adult, one child, and one infant  
 4 Non-rebreather or partial non-rebreather oxygen masks, two adult and two pediatric  
 2 Nasal cannulas, adult  
 1 Portable oxygen apparatus, capable of metered flow with adequate tubing  
 1 Permanent large capacity oxygen delivery system  
**AUTOMATIC DEFIBRILLATOR EQUIPMENT AND SUPPLIES**  
 1 Defibrillator, automatic portable battery operated, per vehicle or response unit  
 2 Sets of electrode pads for defibrillation  
**REQUIRED DRUGS**  
 1 500cc Irrigation solution  
 650mg Aspirin  
 2 Epinephrine auto-injectors, one standard and one junior (Preloaded syringes with age appropriate dosage of epinephrine 1:1000 is an acceptable substitute for auto-injectors)  
 2 Concentrated oral glucose tubes or equivalent  
 50 Grams Activated Charcoal  
**OPTIONAL DRUGS**  
 Acetaminophen elixir 160mg/5ml  
 Nerve Antidote Kits (Mark I Kits or DuoDote)  
**EQUIPMENT AND SUPPLIES FOR AN INTERMEDIATE AMBULANCE**  
 2 Blood pressure cuffs, one adult, one pediatric  
 2 Stethoscopes, one adult and one pediatric or combination  
 2 Pillows, with vinyl cover or single use disposable pillows  
 2 Emesis basins, emesis bags, or large basins  
 1 Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds  
 2 Head immobilization devices or equivalent  
 2 Lower extremity traction splints or equivalent, one adult and one pediatric  
 2 Non-traction extremity splints, one upper, one lower, or

PASG pants  
 2 Spine boards, one short and one long (Wood must be coated or sealed)  
 2 Heavy duty shears  
 2 Urinals, one male, one female, or two universal  
 1 Printed Pediatric Reference Material  
 2 Blankets  
 2 Sheets  
 6 Towels  
 2 Universal sterile dressings, 9"x5", 10"x8", 8"x9", or equivalent  
 12 Gauze pads, sterile, 4"x4"  
 8 Bandages, self-adhering, soft roller type, 4"x5 yards or equivalent  
 2 Rolls of tape  
 4 Cervical collars, three adult and one pediatric or equivalent  
 2 Triangular bandages  
 2 Boxes of gloves, one box non-sterile and one box latex free or equivalent  
 1 Obstetrical kit, sterile  
 2 Concentrated oral glucose tubes or equivalent  
 2 Occlusive sterile dressings or equivalent  
 1 Car seat, approved by Federal Safety standard  
 1 Portable jump kit stocked with appropriate medical supplies  
 2 Preventive T.B. transmission masks  
 2 Protective eye wear (goggles or face shields)  
 2 Full body substance isolation protection or one for each crew member  
 1 Thermometer or equivalent  
 2 Biohazard bags  
 1 Disinfecting agent for cleaning vehicle and equipment of body fluids  
 1 Glucose measuring device  
**AIRWAY EQUIPMENT AND SUPPLIES**  
 1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip  
 2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks  
 1 Baby syringe, bulb type, separate from the OB kit  
 3 Oropharyngeal airways, with one adult, one child, and one infant size  
 3 Nasopharyngeal airways, one adult, one child, and one infant  
 4 Non-rebreather or partial non-rebreather oxygen masks, two adult and two pediatric  
 2 Nasal cannulas, adult  
 1 Portable oxygen apparatus, capable of metered flow with adequate tubing  
 1 Permanent large capacity oxygen delivery system  
 2 Small volume nebulizer container for aerosol solutions  
 1 Laryngoscope with batteries curved and straight blades with bulbs and two extra batteries and two extra bulbs \*  
 1 Water based lubricant, one tube or equivalent\*  
 7 Endotracheal tubes, one each: cuffed 8, 7.5, 7, 6, uncuffed 5, 4, 3\*  
 2 Stylets, one adult and one pediatric\*  
 1 Device for securing the endotracheal tube\*  
 2 Endotracheal tube confirmation device\*  
 2 Flexible sterile endotracheal suction catheters from 5-12 french\*  
 2 Oro-nasogastric tubes, one adult, and one pediatric \*  
**AUTOMATIC DEFIBRILLATOR EQUIPMENT AND SUPPLIES**  
 1 Defibrillator, automatic portable battery operated, per vehicle or response unit  
 2 Sets of electrode pads for defibrillation  
**IV SUPPLIES**

- 10 Alcohol or Iodine preps
- 2 IV start kits or equivalent
- 12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g and 24g
- 2 Arm boards, two different sizes
- 2 IV tubings with micro drip chambers
- 3 IV tubings with standard drip chambers
- 5 Extension tubings
- 4 Syringes, one 30 or 60cc, one 10cc, one 5cc, and one 3cc
- 1 Three-way stopcock
- 1 Sharps container
- 1 Safety razor
- 1 Vacutainer holder
- 4 Vacutainer tubes
- 2 Intraosseous needles, two each, 15 or 16, and 18 guage\*
- REQUIRED DRUGS
- 2 25gm Activated Charcoal
- 2 2.5mg premixed Albuterol Sulfate
- 2 Atropine Sulfate 1mg each
- 2 Dextrose 50% or Glucagon (must have at least 1 D50)
- 4 1cc (1mg/1cc) Epinephrine 1:1,000
- 2 Epinephrine 1:10,000 1mg each
- 2 100 mg preload Lidocaine
- 2 10mg Morphine Sulfate
- 2 Naloxone HCL 2mg each
- 1 bottle or 0.4mg Nitroglycerine (tablets or spray)
- 1 2gm Lidocaine IV Drip
- 1 500cc Irrigation solution
- 650mg Aspirin
- 4,000cc Ringers Lactate or Normal Saline
- OPTIONAL DRUGS
- Acetaminophen elixir 160mg/5ml
- Fentanyl
- Midazolam
- Nubain
- Promethazine
- Zofran
- Nerve Agent Antidote kits (Mark I Kits or DuoDote)
- CyanoKit
- EQUIPMENT AND SUPPLIES FOR AN INTERMEDIATE ADVANCED AMBULANCE
- 2 Blood pressure cuffs, one adult, one pediatric
- 2 Stethoscopes, one adult and one pediatric or combination
- 2 Pillows, with vinyl cover or single use disposable pillows
- 2 Emesis basins, emesis bags, or large basins
- 1 Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds
- 2 Head immobilization devices or equivalent
- 2 Lower extremity traction splints or equivalent, one adult and one pediatric
- 2 Non-traction extremity splints, one upper, one lower, or PASG pants
- 2 Spine boards, one short and one long (Wood must be coated or sealed)
- 2 Heavy duty shears
- 2 Urinals, one male, one female, or two universal
- 1 Printed Pediatric Reference Material
- 2 Blankets
- 2 Sheets
- 6 Towels
- 2 Universal sterile dressings, 9"x5", 10"x8", 8"x9", or equivalent
- 12 Gauze pads, sterile, 4"x4"
- 8 Bandages, self-adhering, soft roller type, 4"x5 yards or equivalent
- 2 Rolls of tape
- 4 Cervical collars, three adult and one pediatric or

- equivalent
- 2 Triangular bandages
- 2 Boxes of gloves, one box non-sterile and one box latex free or equivalent
- 1 Obstetrical kit, sterile
- 2 Concentrated oral glucose tubes or equivalent
- 4 Occlusive sterile dressings or equivalent
- 1 Car seat, approved by Federal Safety standard
- 1 Portable jump kit stocked with appropriate medical supplies
- 2 Preventive T.B. transmission masks
- 2 Protective eye wear (goggles or face shields)
- 2 Full body substance isolation protection or one for each crew member
- 1 Thermometer or equivalent
- 2 Biohazard bags
- 1 Disinfecting agent for cleaning vehicle and equipment of body fluids
- 1 Glucose measuring device
- AIRWAY EQUIPMENT AND SUPPLIES
- 1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip
- 2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks
- 1 Baby syringe, bulb type, separate from the OB kit
- 3 Oropharyngeal airways, with one adult, one child, and one infant size
- 3 Nasopharyngeal airways, one adult, one child, and one infant
- 2 Magill forceps, one adult and one child
- 4 Non-rebreather or partial non-rebreather oxygen masks, two adult and two pediatric
- 2 Nasal cannulas, adult
- 1 Portable oxygen apparatus, capable of metered flow with adequate tubing
- 1 Oxygen saturation monitor
- 1 Permanent large capacity oxygen delivery system
- 2 Small volume nebulizer container for aerosol solutions
- 1 Laryngoscope with batteries curved and straight blades with bulbs and two extra batteries and two extra bulbs
- 1 Water based lubricant, one tube or equivalent
- 7 Endotracheal tubes, one each: cuffed 8, 7.5, 7, 6, uncuffed 5, 4, 3
- 2 Stylets, one adult and one pediatric.
- 1 Device for securing the endotracheal tube
- 2 Endotracheal tube confirmation device
- 2 Flexible sterile endotracheal suction catheters from 5-12 french
- 2 Oro-nasogastric tubes, one adult, and one pediatric
- DEFIBRILLATOR EQUIPMENT AND SUPPLIES
- 1 Portable cardiac monitor/defibrillator/pacer with adult and pediatric capabilities
- 2 Sets Electrodes or equivalent
- 2 Sets Combination type defibrillator pads or equivalent
- 2 Combination type TCP Pads or equivalent
- IV SUPPLIES
- 10 Alcohol or Iodine preps
- 2 IV start kits or equivalent
- 12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g and 24g
- 2 Arm boards, two different sizes
- 2 IV tubings with micro drip chambers
- 3 IV tubings with standard drip chambers
- 5 Extension tubings
- 4 Syringes, one 30 or 60cc, one 10cc, one 5cc, and one 3cc
- 1 Three-way stopcock
- 1 Sharps container
- 1 Safety razor

- 1 Vacutainer holder
- 4 Vacutainer tubes
- 2 Intraosseous needles, two each, 15 or 16, and 18 gauge
- REQUIRED DRUGS**
- 2 25gm Activated Charcoal
- 2 2.5mg premixed Albuterol Sulfate or equivalent
- 2 Atropine Sulfate 1mg
- 2 Dextrose 50% or Glucagon (must have 1 D50)
- 2 10mg either Diazepam or Midazolam, or both.
- However, Diazepam is not required after July 1, 2008
- 1 Epinephrine 1:1,000 15mg or equivalent
- 2 Epinephrine 1:10,000 1mg each
- 2 100 mg preload Lidocaine
- 2 10mg Morphine Sulfate
- 2 Naloxone HCL 2mg each
- 1 Bottle 0.4mg Nitroglycerine (tablets or spray)
- 1 2gm Lidocaine IV Drip
- 1 500cc Irrigation solution
- 650mg Aspirin
- 4,000cc Ringers Lactate or Normal Saline
- OPTIONAL DRUGS**
- Acetaminophen elixir 160mg/5ml
- Adenosine
- Fentanyl
- Furosemide
- Promethazine
- Zofran
- Nerve Agent Antidote kits (Mark I Kits or DuoDote)
- CyanoKit
- EQUIPMENT AND SUPPLIES FOR PARAMEDIC SERVICES**
- 2 Blood pressure cuffs, one adult, one pediatric
- 2 Stethoscopes, one adult and one pediatric or combination
- 1 Thermometer or equivalent
- 1 Glucose measuring device
- 2 Head immobilization devices or equivalent
- 2 Lower extremity traction splints or equivalent, one adult and one pediatric
- 2 Non-traction extremity splints, one upper, one lower, or PASG pants
- 2 Spine boards, one short and one long. Wooden boards must be coated or sealed
- 1 Full body pediatric immobilization device. (Paramedic transfer units excluded)
- 2 Heavy duty shears
- 2 Blankets
- 2 Towels
- 2 Universal sterile dressings, 9"x5", 10"x8", 8"x 9", or equivalent
- 12 Gauze pads, sterile, 4" x 4".
- 8 Bandages, self-adhering, soft roller type, 4"x 5 yards or equivalent
- 2 Rolls of tape
- 4 Cervical collars, three adult and one pediatric or equivalent
- 2 Triangular bandages
- 2 Boxes of gloves, one box non-sterile and one box latex free or equivalent
- 2 Pairs Sterile gloves
- 1 Obstetrical kits, sterile
- 4 Occlusive sterile dressings or equivalent
- 1 Portable jump kit stocked with appropriate medical supplies
- 2 Emesis basins, emesis bags, or large basins
- 1 Printed Pediatric Reference Material
- AIRWAY EQUIPMENT AND SUPPLIES**
- 1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip
- 1 Oxygen saturation monitor
- 1 Baby syringe, bulb type separate from the OB kit
- 1 Laryngoscope with batteries curved and straight blades with bulbs and two extra batteries and two extra bulbs
- 1 Water based lubricant, one tube or equivalent
- 18 Endotracheal tubes, two each, uncuffed 3, 4 and 5, cuffed 5.5, 6, 6.5, 7, 7.5, 8
- 1 Device for securing the endotracheal tube
- 2 Endotracheal tube confirmation devices
- 2 Flexible sterile endotracheal suction catheters from 5-12 french
- 3 Oropharyngeal airways, one adult, one child, and one infant size
- 3 Nasopharyngeal airways, one adult, one child, and one infant size
- 2 Magill forceps, one child and one adult
- 1 Portable oxygen apparatus, capable of metered flow with adequate tubing
- 2 Oro-nasogastric tubes, one adult, and one pediatric
- 4 Non-rebreather or partial non-rebreather oxygen masks, two adult and two pediatric
- 2 Nasal cannulas, adult
- 2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks
- 2 Stylettes, one pediatric and one adult
- 2 Tongue blades
- 1 Meconium aspirator
- 1 Cricothyroidotomy kit or equivalent
- 2 Small volume nebulizer container for aerosol solutions
- DEFIBRILLATOR EQUIPMENT AND SUPPLIES**
- 1 Portable cardiac monitor/defibrillator/pacer with adult and pediatric capabilities
- 2 Sets Electrodes or equivalent
- 2 Sets Combination type defibrillator pads or equivalent
- 2 Sets Electrode wire sets or equivalent. (One only for paramedic transfer service)
- 2 Combination type TCP Pads or equivalent
- IV SUPPLIES**
- 10 Alcohol or iodine preps
- 2 IV start kits or equivalent
- 12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g, 24g
- 4 Intraosseous needles, two each, 15 or 16 gauge and two 18 gauge
- 2 Arm boards, two different sizes
- 2 IV tubings with micro drip chambers
- 3 IV tubings with standard drip chambers
- 2 IV tubings with blood administration sets
- 5 Extension tubings
- 6 Syringes with luer lock, two each 3cc, 10cc, 60cc
- 1 Cath tipped syringe, 30cc or 60cc
- 2 Three-way stopcocks
- 1 Sharps container
- 1 Vacutainer holder
- 2 Vacutainer multiple sample luer adapters
- 4 Vacutainer tubes
- SAFETY AND PERSONAL PROTECTION EQUIPMENT**
- 2 Preventive T.B. transmission masks
- 2 Protective eye wear (goggles or face shields)
- 2 Biohazard bags
- 2 Full body substance isolation protection or one for each crew member
- 1 Disinfecting agent for cleaning vehicle and equipment of body fluids
- 2 Protective headware
- 2 Pair leather gloves
- 2 Reflective safety vests or equivalent
- REQUIRED DRUGS**
- 2 Activated Charcoal 25gm each

- 2 Albuterol Sulfate 2.5mg pre-mixed
  - 2 Atropine Sulfate 1mg
  - 650mg Aspirin
  - 2 Dextrose 50% or Glucagon (must have at least 1 D50)
  - 2 10 mg of either Diazepam or Midazolam, or both.
- However, Diazepam is not required after July 1, 2008.
- 2 Diphenhydramine 50mg each
  - 2 either Dopamine HCL 400mg each or 2 mics/ml
- Epinephrine drip (2cc Epinephrine 1:1000 to 1000cc LR or NS), or both
- 1 Epinephrine 1:1,000 15mg
  - 2 Epinephrine 1:10,000 1mg each
  - Fentanyl 200 mcg
  - 2 Lidocaine 100mg each or 450mg Amioderone or both
  - 1 Lidocaine IV drip 2g
  - 2 Morphine Sulfate 10mg each
  - 4 Naloxone HCL 2mg each
  - 1 Bottle Nitroglycerine 0.4mg (tablets or spray)
  - 2 Promethazine HCL 25mg each or Zofran 8mg, or both
  - 1 Sodium Bicarbonate 10mEq
  - 2 Sodium Bicarbonate 50mEq each
  - 1 Irrigation solution, 500cc
  - 4,000cc Ringers Lactate or Normal Saline
  - 4 Normal Saline for injection/inhalation
- OPTIONAL DRUGS**
- Acetaminophen 160mg/5ml
  - Adenosine
  - Atrovent
  - Calcium Chloride
  - Furosemide
  - Haldol
  - Lorazepam
  - Magnesium Sulfate
  - Meperidine
  - Oxytocin
  - Vasopressin
  - Nerve Agent Antidote kits (Mark I Kits or DuoDote)
  - CyanoKit
- (2) If a licensed or designated agency desires to carry different equipment, supplies, or medication from the vehicle supply requirements, it must submit a written request from the off-line medical director to the Department requesting the variance. The request shall include:
- (a) a detailed training outline;
  - (b) protocols;
  - (c) proficiency testing;
  - (d) support documentation;
  - (e) local EMS Council or committee comments; and
  - (f) a detailed letter of justification.
- (3) All equipment, except disposable items, shall be so designed, constructed, and of such materials that under normal conditions and operations, it is durable and capable of withstanding repeated cleaning. The permittee:
- (a) shall clean the equipment after each use in accordance with OSHA standards;
  - (b) shall sanitize or sterilize equipment prior to reuse;
  - (c) may not reuse equipment intended for single use;
  - (d) shall clean and change linens after each use; and
  - (e) shall store or secure all equipment in a readily accessible and protected manner and in a manner to prevent its movement during a crash.
- (4) The permittee shall have all equipment tested, maintained, and calibrated in accordance with the manufacturer's standards.
- (a) the permittee shall document all equipment inspections, testing, maintenance, and calibrations. Testing or calibration conducted by an outside service shall be documented and available for Department review.
- (b) a permittee required to carry any of the following

equipment shall perform monthly inspections to ensure its ability to function correctly:

- (i) defibrillator, manual or automatic;
  - (ii) autovent;
  - (iii) infusion pump;
  - (iv) glucometer;
  - (v) flow restricted, oxygen-powered ventilation devices;
  - (vi) suction equipment;
  - (vii) electronic Doppler device;
  - (viii) automatic blood pressure/pulse measuring device;
  - (ix) pulse oximeter.
- (c) for all pieces of required equipment that require consumables for the operation of the equipment; power supplies; electrical cables, pneumatic power lines, hydraulic power lines, or related connectors, the permittee shall perform monthly inspections to ensure their correct function.

(5) A licensee shall:

(a) store all medications according to the manufacturers' recommendations for temperature control and packaging requirements; and

(b) return to the supplier for replacement any medication known or suspected to have been subjected to temperatures outside the recommended range.

#### **R426-15-204. Insurance.**

(1) An ambulance licensee shall obtain insurance to respond to damages due to operation of the vehicle, in the manner and minimum amounts specified below:

(a) liability insurance in the amount of \$300,000 for each individual claim and \$500,000 for total claims for personal injury from any one occurrence.

(b) liability insurance in the amount of \$100,000 for property damage from any one occurrence.

(2) The ambulance licensee shall obtain the insurance from an insurance company authorized to write liability coverage in Utah or through a self-insurance program. The ambulance licensee shall provide the Department with a copy of its certificate of insurance demonstrating compliance with this section.

(3) The ambulance licensee shall report any coverage change and reportable vehicle accident occurring during the provision of emergency medical services to the Department within 60 days after the change or reportable vehicle accident. The ambulance licensee must direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage.

#### **R426-15-205. Communications.**

All permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(1) Communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(2) Communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

#### **R426-15-300. Emergency Medical Dispatch Center.**

(1) An emergency medical dispatch center must annually provide organizational information to the Department including:

- (a) The number of EMD certified personnel;
- (b) Name of the dispatch supervisor;
- (c) Name of the agency's off-line medical director; and
- (d) Updated address and contact information.

(2) Emergency medical dispatch centers may only provide pre-arrival medical instructions through a certified EMD.

(3) An emergency medical dispatch center must have an offline medical director. The offline medical director must review and approve the emergency medical dispatch center's

pre-arrival medical instructions.

**R426-15-400. Resource Hospital.**

(1) A resource hospital must provide on-line medical control for all prehospital EMS providers who request assistance for patient care, 24 hours-a-day, seven days a week. A resource hospital must:

(a) create and abide by written prehospital emergency patient care protocols for use in providing on-line medical control for prehospital EMS providers;

(b) train new staff on the protocols before the new staff is permitted to provide on-line medical control; and annually review with physician and nursing staff

(c) annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control; and

(d) make the protocols immediately available to staff for reference.

(2) The on-line medical control shall be by direct voice communication with a physician or a registered nurse or physician's assistant licensed in Utah who is in voice contact with a physician.

(3) A resource hospital must establish and actively implement a quality improvement process.

(a) the hospital must designate a medical control committee.

(b) the committee must meet at least quarterly to review and evaluate prehospital emergency runs, continuing medical education needs, and EMS system administration problems.

(i) committee members must include an emergency physician representative, hospital nurse representative, hospital administration representative, and ambulance and emergency services representatives.

(ii) the hospital must keep minutes of the medical control committee's meetings and make them available for Department review.

(c) the hospital must appoint a quality review coordinator for the prehospital quality improvement process.

(d) the hospital must cooperate with the prehospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular prehospital EMS provider.

(e) the hospital must assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format specified by the Department, quarterly data specified by the Department.

**R426-15-401. Medical Control.**

(1) All licensees, designated dispatch centers, and quick response units must enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician must be familiar with:

(a) the design and operation of the local prehospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols or pre-arrival instructions to be given by designated emergency medical dispatch centers.

(3) The off-line medical director shall ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(4) The off-line medical director shall:

(a) develop and implement an effective quality

improvement program, including medical audit, review, and critique of patient care;

(b) annually review triage, treatment, and transport protocols and update them as necessary;

(c) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director must notify the Department within one business day of the suspension.

(d) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

**R426-15-402. Scene and Patient Management.**

(1) Upon arrival at the scene of an injury or illness, the field EMS personnel shall secure radio or telephonic contact with on-line medical control as quickly as possible.

(2) If radio or telephonic contact cannot be obtained, the field EMS personnel shall so indicate on the EMS report form and follow local written protocol;

(3) If there is a physician at the scene who wishes to assist or provide on-scene medical direction to the field EMS personnel, the field EMS personnel must follow his instructions, but only until communications are established with on-line medical control. If the proposed treatment from the on-scene physician differs from existing EMS triage, treatment, and transport protocols and is contradictory to quality patient care, the field EMS personnel may revert to existing EMS triage, treatment, and transport protocols for the continued management of the patient.

(a) if the physician at the scene wishes to continue directing the field EMS personnel's activities, the field EMS personnel shall so notify on-line medical control;

(b) the on-line medical control may:

(i) allow the on-scene physician to assume or continue medical control;

(ii) assume medical control, but allowing the physician at the scene to assist; or

(iii) assume medical control with no participation by the on-scene physician.

(c) if on-line medical control allows the on-scene physician to assume or continue medical control, the field EMS personnel shall repeat the on-scene physician's orders to the on-line medical control for evaluation and recording. If, in the judgment of the on-line medical control who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the on-line medical control may reassume medical control of the field EMS personnel at the scene.

(5) A paramedic tactical rescue may only function at the invitation of the local or state public safety authority. When called upon for assistance, it must immediately notify the local ground ambulance licensee to coordinate patient transportation.

**R426-15-500. Pilot Projects.**

(1) A person who proposes to undertake a research or study project which requires waiver of any rule must have a project director who is a physician licensed to practice medicine in Utah, and must submit a written proposal to the Department for presentation to the EMS Committee for recommendation.

(2) The proposal shall include the following:

(a) a project description that describes the:

(i) need for project;

(ii) project goal;

(iii) specific objectives;

(iv) approval by the agency off-line medical director;



- (v) methodology for the project implementation;
  - (vi) geographical area involved by the proposed project;
  - (vii) specific rule or portion of rule to be waived;
  - (viii) proposed waiver language; and
  - (ix) evaluation methodology.
- (b) a list of the EMS providers and hospitals participating in the project;
- (c) a signed statement of endorsement from the participating hospital medical directors and administrators, the director of each participating paramedic and ambulance licensee, other project participants, and other parties who may be significantly affected.
- (d) if the pilot project requires the use of additional skills, a description of the skills to be utilized by the field EMS personnel and provision for training and supervising the field EMS personnel who are to utilize these skills, including the names of the field EMS personnel.
- (e) the name and signature of the project director attesting to his support and approval of the project proposal.
- (3) If the pilot project involves human subjects research, the applicant must also obtain Department Institutional Review Board approval.
- (4) The Department or Committee, as appropriate, may require the applicant to meet additional conditions as it considers necessary or helpful to the success of the project, integrity of the EMS system, and safety to the public.
- (5) The Department or Committee, as appropriate, may initially grant project approval for one year. The Department or Committee, as appropriate, may grant approval for continuation beyond the initial year based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Department at least 90 days prior to the end of the approved period. A pilot project may not exceed three years;
- (6) The Department or Committee, as appropriate, may only waive a rule if:
- (a) the applicant has met the requirements of this section;
  - (b) the waiver is not inconsistent with statutory requirements;
  - (c) there is not already another pilot project being conducted on the same subject; and
  - (d) it finds that the pilot project has the potential to improve pre-hospital medical care.
- (7) Approval of a project allows the field EMS personnel listed in the proposal to exercise the specified skills of the participants in the project. The project director shall submit the names of field EMS personnel not initially approved to the Department.
- (8) The Department or Committee, as appropriate, may rescind approval for the project at any time if:
- (a) those implementing the project fail to follow the protocols and conditions outlined for the project;
  - (b) it determines that the waiver is detrimental to public health; or
  - (c) it determines that the project's risks outweigh the benefits that have been achieved.
- (9) The Department or Committee, as appropriate, shall allow the EMS provider involved in the study to appear before the Department or Committee, as appropriate, to explain and express its views before determining to rescind the waiver for the project.
- (10) At least six months prior to the planned completion of the project, the medical director shall submit to the Department a report with the preliminary findings of the project and any recommendations for change in the project requirements;

care or as allowed by statute or rule.

**R426-15-700. Penalties.**

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: emergency medical services**  
**March 15, 2010**  
**Notice of Continuation July 28, 2009**

**26-8a**

**R426-15-600. Confidentiality of Patient Information.**

Licensees, designees, and EMS certified individuals shall not disclose patient information except as necessary for patient

**R426. Health, Health Systems Improvement, Emergency Medical Services.****R426-16. Emergency Medical Services Ambulance Rates and Charges.****R426-16-1. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

**R426-16-2. Ambulance Transportation Rates and Charges.**

(1) Licensed services operating under R426-15 shall not charge more than the rates described in this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(c) An agency may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on an annual review of the most recent 12 month percentage change in price levels from the following sources: U.S. Bureau of Labor Statistics Occupational Employment and Wage Data, the National Consumer Pricing Index (CPI), the State of Utah Governor's Office of Planning and Budget economic report; the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Consumers transportation and medical care categories, and the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Wage Earners and Clerical Workers transportation and medical categories. The adjustment shall be made effective and published by order of the Department prior to June 1 of each year and become effective July 1, of each year. All licensed services will collect financial data as delineated by the department to be submitted as detailed under R426-8-2(10). This data shall then be used as the basis for the annual rate adjustment.

**(3) Base Rates**

(a) Basic Ambulance - \$400.40 per transport.

(b) Intermediate Ambulance - \$475.40 per transport.

(c) Paramedic Ambulance - \$600.50 per transport.

(d)(i) A basic ambulance licensee may charge a base rate of \$720.65 per transport and an intermediate ambulance licensee may charge a base rate of \$795.70 per transport if:

(A) a dispatch agency dispatches a paramedic licensee to treat the individual;

(B) the paramedic licensee has initiated advanced life support;

(C) on-line medical control directs that a paramedic remain with the patient during transport; and

(D) the ambulance provider pays \$210.95 to the paramedic licensee.

(ii) An ambulance service that interfaces with a paramedic rescue service must have an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to the maximum of \$210.95 per transport.

**(4) Mileage Rates**

(a) \$31.40 per mile or fraction thereof.

(b) In all cases mileage shall be computed from the point of pickup to the point of delivery.

(c) A fuel fluctuation surcharge of \$0.25 per mile may be added when fuel prices are more than \$.31 per gallon above the price of record, as established by the Department, on the immediately prior July 1 of each year. The Department will notify all agencies when this surcharge is available.

**(5) Surcharges -**

(a) A surcharge of \$39.75 may be assessed if the response requires the use of emergency lights and siren.

(b) A surcharge of \$39.75 may be assessed for ambulance service between the hours of 8:00 p.m. and 8:00 a.m.

(c) If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of \$1.50 per mile may be assessed.

**(6) Special Provisions -**

(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The emergency surcharge, night surcharge and mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) A round trip may be billed as two one-way trips.

(c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

**(7) Treat and Release Rate -**

(a) An ambulance licensee may charge a treat and release fee of \$200.00 if:

(i) a dispatch agency dispatches the ambulance to provide emergency care to an individual;

(ii) the ambulance personnel assesses or treats the individual;

(iii) the individual does not refuse service; and

(iv) the ambulance does not transport the individual.

(b) An ambulance licensee may charge for supplies and assess surcharges as provided R426-16-2(5) and R426-16-2(8).

(8) Supplies shall be priced fairly and competitively with similar products in the local area.

**(9) Uncontrollable Cost Escalation -**

(a) In the event of a temporary escalation of costs, an ambulance service may petition the EMS Committee for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

(b) The petition shall be submitted to the Department, which shall within 30 days, notify the ambulance service of the date and time of the next EMS Committee meeting and the disposition of the petition. Prior to the EMS Committee meeting, the Department shall evaluate the petition for reasonableness and prepare a written response for consideration by the EMS Committee. The EMS Committee may reject, modify or adopt the proposed surcharge as a proposed rule and direct the Department to submit a notice of rule change to the Division of Administrative Rules in accordance with the Rulemaking Act. The public comment period shall include a public hearing.

(10) The licensed service shall file with the Department within five months of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria specified in the EMS Committee's "Department of Health Uniform Licensed Service Fiscal Reporting Guide". The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting, beginning 2001.

**(11) Fiscal audits**

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established in the "Department of Health Uniform Licensed Service Fiscal Reporting Guide." The Department, or its representative, may audit licensed services to verify the information given in the report.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

**R426-16-3. Penalty for Violation of Rule.**

Any person who violates any provision of this rule may be assessed a penalty as provided in Section 26-23-6.

**KEY: emergency medical services**

**March 15, 2010**

**Notice of Continuation July 28, 2009**

**26-8a**

**R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.****R444-14. Rule for the Certification of Environmental Laboratories.****R444-14-1. Introduction.**

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

**R444-14-2. Definitions.**

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

(4) "Department" means the Utah Department of Health.

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

(8) "TNI" means The NELAC Institute.

**R444-14-3. Laboratory Certification.**

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Chapter 4, "Accreditation Process", of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

**R444-14-4. Analytical Methods.**

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through 2008, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40

CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

**R444-14-5. Proficiency Testing.**

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Chapter 2, "Proficiency Testing", of the National Environmental Laboratory Accreditation Conference Standards approved July 2003, which are incorporated by reference.

**R444-14-6. Quality System.**

(1) A certified laboratory must adhere to the requirements found in Chapter 5, Quality Systems, of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

**R444-14-7. Recognition of TNI Accreditation.**

The department may certify a laboratory that is TNI accredited. A laboratory seeking certification because of its TNI accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of TNI accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

**R444-14-8. Penalties.**

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

**KEY: laboratories****March 15, 2010****Notice of Continuation February 26, 2007****26-1-30(2)(m)**

**R590. Insurance, Administration.****R590-160. Administrative Proceedings.****R590-160-1. Authority.**

This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A-2-201(3)(a), and, Subsection 63G-4-102(6), Subsection 63G-4-203(1) and other applicable sections of Chapter 4 of Title 63G providing for rules governing adjudicative proceedings.

**R590-160-2. Purpose and Scope.**

1(a) Purpose: This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the insurance commissioner or the commissioner's designee.

(b) Public hearings under Section 63G-3-302 are not covered by this rule.

(2) Scope: This rule applies to all licensees and non-licensees involved in the business of insurance in Utah.

**R590-160-3. Definitions.**

For the purposes of this rule, the commissioner adopts the definitions as set forth in Section 63G-4-103 and the following:

(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

(2) "Department Representative" means the person who will represent the interests of the Utah Insurance Department, including its attorney, in any administrative action before the commissioner.

(3) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

(4) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

(5) "Petitioner" is a person seeking agency action.

(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.

**R590-160-4. Designations of Proceedings.**

(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.

(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.

(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63G-4-202(3).

**R590-160-5. Rules Applicable to All Proceedings.**

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Friday, Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Friday, Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer.

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenor", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.

(b) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.

(c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right side, docket number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of

Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes

impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

#### **R590-160-6. Rules Applicable to Formal Proceedings.**

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63G-4-202.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is simultaneously provided at no cost to the commissioner. Transcriptions shall be done by a certified shorthand reporter.

(6) Subpoenas and Fees.

(a) Subpoenas. On the motion of the commissioner or the presiding officer, or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to

payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery and motions thereupon may be had in accordance with the Utah Rules of Civil Procedure, Rules 27 through 37.

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

#### **R590-160-7. Rules Applicable to Informal Proceedings.**

(1) An informal proceeding may be commenced by the department by issuing a Notice of Informal Proceeding and Order in cases when it appears to the department that there are no disputed issues exist or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondent unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.

(2) Failure to request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, including a request for a hearing upon the denial of an application for a license or certificate of authority, or a petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, a Notice of Hearing shall be issued stating the matters to be decided and giving notice of the date, time and place of an informal hearing to be held.

(4) An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

(5) At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

#### **R590-160-8. Agency Review.**

(1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section 63G-4-301.

(3) Review shall be conducted by the commissioner or a person or persons designated by the commissioner, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b). The request for agency review shall include a copy of the order, which is the subject of the request.

(b)(i) A party requesting agency review shall set forth any

factual or legal basis in support of that request; and

(ii) may include supporting arguments and citation to appropriate legal authority; and

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(d) A party challenging a legal conclusion must support its argument with citation to any relevant authority and also:

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.5(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under the circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(5) Request of Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions

or restrictions on a party pending agency review.

(d) The commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The commissioner may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the commissioner or the commissioner's designee.

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

(ii) If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response in opposition to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.

(d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The commissioner may order or permit oral argument if the commissioner determines such argument is warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

#### **R590-160-9. Sanctions.**

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with this rule or any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with this rule or lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with this rule, rulings, or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

#### **R590-160-10. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule on the effective date of the rule

#### **R590-160-11. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

**KEY: insurance**

**March 10, 2010**

**Notice of Continuation October 30, 2008**

**31A-2-201**

**63G-4-102**

**63G-4-203**



**R590. Insurance, Administration.****R590-164. Uniform Health Billing Rule.****R590-164-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5 which authorizes the commissioner to adopt uniform claim forms, billing codes, and compatible systems of electronic billing.

**R590-164-2. Purpose.**

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange standards for use by health payers and providers.

**R590-164-3. Applicability and Scope.**

A. This rule applies to health claims, health encounters, and electronic data interchange between payers and providers.

B. Except as otherwise specifically provided, the requirements of this rule apply to payers and providers.

C. This rule does not prohibit a payer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

D. This rule does not prohibit a payer or provider from using alternative forms or procedures specified in a written contract between the payer and provider.

E. This rule does not exempt a payer or provider from data reporting requirements under state or federal law or regulation.

**R590-164-4. Definitions.**

As used in this rule:

A. Uniform Claim Forms are defined as:

(1)(a) "UB-92 HCFA-1450" means the health insurance claim form maintained by HCFA for use by institutional care providers. Currently this form is known as the UB92. This form will not be used after 01/01/2008.

(b) "UB-04" means the health insurance claim form maintained by NUBC for use by institutional care providers.

(2)(a) "Form HCFA-1500 (12-90)" means the health insurance claim form maintained by HCFA for use by health care providers. This form will not be used after 06/01/2008.

(b) "Form CMS 1500 (08-05)" means the health insurance claim form maintained by NUCC for use by health care providers. This form will not be used after 06/01/2008.

(3) "American Dental Association, 1999 Version 2000" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(4) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

B. Uniform Claim Codes are defined as:

(1) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(2) "CDT Codes" means the current dental terminology prescribed by the American Dental Association.

(3) "CPT Codes" means the current physicians procedural terminology, published by the American Medical Association.

(4) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's (AMA's) Physician Current Procedural Terminology, codes, alphanumeric codes, and related modifiers. This includes:

(a) "HCPCS Level 1 Codes" which are the AMA's CPT codes and modifiers for professional services and procedures.

(b) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT codes.

(5) "ICDCM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.

(6) "NDC" means the National Drug Codes of the Food and Drug Administration.

(7) "UB04 Rate Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

C. "Electronic Data Interchange Standard" means the:

(1) ASC X12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides as modified by the Utah Health Information Network (UHIN) Standards Committee;

(2) other standards developed by the UHIN Standards Committee at the request of the commissioner; and

(3) as adopted by the commissioner by rule.

D. "Payer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

E. "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

F. "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services. HCFA is no longer an active division of the Department of Health and Human Services.

G. "UHIN Standards Committee" means the Standards Committee of the Utah Health Information Network.

H. "CMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. CMS replaced HCFA.

I. "HIPAA" means the federal Health Insurance Portability and Accountability Act.

J. "NUBC" means the National Uniform Billing Committee.

K. "NUCC" means the National Uniform Claim Committee.

**R590-164-5. Paper Claim Transactions.**

Payers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

**R590-164-6. Electronic Data Interchange Transactions.**

A. The commissioner shall use the UHIN Standards Committee to develop electronic data interchange standards for use by payers and providers transacting health insurance business electronically. In developing standards for the commissioner, the UHIN Standards Committee shall consult with national standard setting entities including but not limited to Centers for Medicare and Medicaid Services (CMS), the National Uniform Claim Form Committee, ASC X12, NCPDP, and the National Uniform Billing Committee.

B. Standards developed and adopted by the UHIN Standards Committee shall not be required for use by payers and providers, until adopted by the commissioner by rule.

C. Payers shall accept the applicable electronic data if transmitted in accordance with the adopted electronic data interchange standard. Payers may reject electronic data if not transmitted in accordance with the adopted electronic data interchange standard.

D. The following HIPAA+ electronic data interchange standards developed and adopted by the UHIN Standards Committee and adopted by the commissioner are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours or at [www.insurance.utah.gov/rules/index.htm](http://www.insurance.utah.gov/rules/index.htm).

(1) #1 - "Anesthesia v2.0." Purpose: to standardize the transmission of anesthesia data for health care services. This standard does not alter any contractual agreement between providers and payers. Effective date: 07-12-2003.

(2) #2A - "UB92 Form Locator Elements v2.0." Purpose: to clearly describe the use of each form locator in the UB-92 (HCFA 1450) claim billing form and its crosswalk to the HIPAA 837 004010X096A1 Institutional implementation guide. This standard creates a uniform billing method for institutional claims. Effective date: 07-12-2003.

(3) #2B - "HCFA 1500 Box Elements v2.0." Purpose: to clearly describe the standard use of each box (for print images) and its crosswalk to the HIPAA 837 004010X098A1 Professional implementation guide. This standard creates a uniform billing method for professional claims. Effective date: 07/12/03.

(4) #2D - "Dental Form Locator Elements v2.0." Purpose: to clearly describe the standard use of each Form Locator (for print images) and its crosswalk to the HIPAA 837 004010X097A1 Dental implementation guide. This standard creates a uniform billing method for dental claims. Effective date: 12/12/03.

(5) #3 - "837 Health Care Claim Standard v2.1." Purpose: to detail the standard transactions for the transmission of health care claims and encounters and associated transactions in the state of Utah. Effective date: 01/17/03.

(6) #4 - "Provider Remittance Advice v2.0." Purpose: to detail the standard transactions for the transmission of health care remittance advices in the state of Utah. Effective date: 01/17/03.

(7) #8 - "Patient Identification Number v2.0." Purpose: to describe the standard for the patient identification number in Utah. Effective date: 09/11/98.

(8) #9 - "Professional Common Edits v2.0." Purpose: to detail common edits used in all professional claims. Effective date: 10/17/97.

(9) #10 - "Facilities Common Edits v2.0." Purpose: to detail common edits used in all facility claims. Effective date: 9/10/99.

(10) #11 - "Medicaid Enrollment Standard v2.0." Purpose: to describe the standard for the transmission of a Medicaid enrollment transaction in the state of Utah. Effective date: 04/12/03.

(11) #12 - "HCFA Box 17 / 17A". Purpose: to establish a standard approach to reporting referring provider name and identifier number on the HCFA 1500 claim form. This Standard also provides the cross walk to the ASC X12 837 Professional Claim version 4010A. Effective date: 09/04/04.

(12) #18 - "Acknowledgements v2.3." Purpose: to detail the standard transaction for the reporting of transmission receipt and transaction and/or functional group X12 standard syntactical errors. This standard adopts the use of the ASC X12 997 transaction. Effective date: 07/08/06.

(13) #20 - "Front-End Acknowledgement Standard v2.2." Purpose: to delineate a standardized front-end encounter acknowledgement transaction. This transaction will be used only to report on the status of a claim/encounter at the level of the payers "front end" claim/encounter edits, i.e., before the payer is legally required to keep a history of the claim/encounter. Effective date: 12/02/05.

(14) #26 - "Telehealth v2.1." Purpose: to provide a uniform standard of billing for a health care claim/encounter delivered via telehealth. Two types of telehealth technology have been identified to deliver health care. Effective date: 9/13/03.

(15) #27 - "Metabolic and Dietary Foods v2.1." Purpose: to provide a uniform standard for billing of metabolic dietary products for those providers and payers that use the UB92 and the HCFA 1500 or the electronic equivalent. Effective date:

09/11/04.

(16) #28 - "Home Health v2.1." Purpose: to provide a uniform standard of billing for a home health care claim/encounter. Effective date: 06/12/04.

(17) #30 - "Pain Management v2.0". Purpose: to provide a uniform method of submitting a pain management claim/encounter, pre-authorization, and notification. Effective date: 10/19/02.

(18) #31 - "Eligibility Inquiry and Response Standard v2.3." Purpose: to detail the Standard transactions for the transmission of health care eligibility inquiries and responses in the state of Utah. Effective date: 06/02/07.

(19) #32 - "Benefits Enrollment and Maintenance Standard v2.1." Purpose: to mandate the use of the ASC X12 834 HIPAA addenda transaction for health care benefits enrollment and maintenance transactions. Effective date: 12/06/04.

(20) #34 - "Psychiatric Day Treatment Standard v2.0." Purpose: to provide a uniform standard for submitting a psychiatric day treatment claim/encounter, pre-authorization, and notification. Effective date: 10/09/02.

(21) #35 - "Prior Authorization/Referral Standard v2.0." Purpose: to (1) lay out general recommendations to payers and providers about handling the UHIN Internet based prior authorization/referral (termed the 278) system, (2) set out the minimum data set that providers will submit in the 278 request, and (3) set out the minimum data set that payers will return on the 278 response. Effective date: 10/08/02.

(22) #36 - "Claim Status Inquiry v2.2." Purpose: to detail the Standard transactions for the transmission of health care claim status inquiries and response in the state of Utah. Effective date: 07/08/06.

(23) #37 - "Individual Name v2.0." Purpose: to provide guidance for entering names into any Utah provider, payer or sponsor systems for patients, enrollees, as well as all other people associated with these records. Effective Date: 07/12/03.

(24) #46 - "Required 'Unknown' Values v2.0." Purpose: to provide guidance for the use of common data values that can be used within the HIPAA transactions when a required data element is not known by the provider, payer or sponsor for patients, enrollees, as well as all other people associated with these transactions. These data values should only be used when the data is truly not available or known. These values are not to be used to replace known data. Effective Date: 06/12/04.

(25) #50 - "Coordination of Benefits v2.0." Purpose: to streamline the coordination of benefits process between payers and providers. The over all goal of this standard is to define the data to be exchanged for Coordination of Benefits (COB) and increase effective communications. Effective Date: 07/08/06.

(26) #51 - "National Provider Identifier v2.1." Purpose: to describe the agreed upon requirements surrounding the National Provider Identifier and its usage for providers and payers in the State of Utah during the transition period of May 23, 2005 through May 22, 2007. Effective Date: 09/01/2007.

(27) #56 - "CMS 1500 Paper Claim Form v2.2." Purpose: to clearly describe the use of each form locator in the CMS 1500 claim billing form and its crosswalk to the HIPAA 837 004010X096A1 Institutional implementation guide. This standard applies to professional providers. Effective Date: 09/01/2007.

(28) #57 - "UB04 Paper Claim Form v2.0." The purpose of this standard is to describe the use of each form locator in the UB04 (CMS1450) claim billing form and its crosswalk to the HIPAA 004010X096A1 Institutional implementation guide. This standard applies to institutional providers. Effective Date: 04/07/2007.

#### **R590-164-7. Separability.**

If any provision of this rule or the application to any

person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

**R590-164-8. Enforcement Date.**

The commissioner will begin enforcing the revised portions of this rule 45 days from the rule's effective date.

**KEY: insurance law**

**August 26, 2008**

**31A-22-614.5**

**Notice of Continuation March 11, 2010**

**R590. Insurance, Administration.****R590-220. Submission of Accident and Health Insurance Filings.****R590-220-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Section 31A-2-201.1 and Subsections 31A-2-201(3), 31A-2-202(2), 31A-22-605(4), 31A-22-620(3)(f), and 31A-30-106(1)(i) and (k).

**R590-220-2. Purpose and Scope.**

(1) The purpose of this rule is to set forth procedures for submitting:

- (a) accident and health filings required by Section 31A-21-201;
- (b) individual accident and health filings in accordance with Section 31A-22-605 and Rule R590-85;
- (c) Medicare supplement filings in accordance with Sections 31A-22-605 and 31A-22-620, and Rules R590-85 and R590-146;
- (d) long term care filings required by Section 31A-22-1404 and Rule R590-148;
- (e) basic health care plan filings required by Section 31A-22-613.5 and Rule R590-175; and
- (f) health benefit plan filings required by Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Rule R590-167.

(2) This rule applies to:

- (a) all types of accident and health insurance products; and
- (b) group accident and health contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

**R590-220-3. Documents Incorporated by Reference.**

(1) The department requires that the documents described in this rule shall be used for all filings.

- (a) Actual copies may be used or you may adapt them to your word processing system.
- (b) If adapted, the content, size, font, and format must be similar.

(2) The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," effective July 1, 2009, is hereby incorporated by reference and is available on the department's web site, [www.insurance.utah.gov](http://www.insurance.utah.gov).

**R590-220-4. Definitions.**

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

- (1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.
- (2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(1)(b).
- (3) "Electronic filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.
- (4) "Eligible group" means a group that meets the definition in Subsection 31A-22-701(1)(a).
- (5) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.
- (6) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.
- (7) "File For Acceptance" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was accepted.
- (8) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(9) "Filer" means a person who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

- (a) a policy;
- (b) a rate, rate manual, or rate methodologies;
- (c) a form;
- (d) a document;
- (e) a plan;
- (f) a manual;
- (g) an application;
- (h) a report;
- (i) a certificate;
- (j) an endorsement or rider;
- (k) an actuarial memorandum, demonstration, and certification;
- (l) a licensee annual statement;
- (m) a licensee renewal application; or
- (n) an advertisement.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rating methodology change" for the purpose of a health benefit plan means a:

- (a) change in the number of case characteristics used by a covered licensee to determine premium rates for health benefit plans in a class of business;
- (b) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) change in the method of allocating expenses among health benefit plans in a class of business; or

(d) change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a covered licensee changes rating factors with respect to more than one case characteristic in a 12-month period, the licensee shall consider the cumulative effect of all such changes in applying the 10% test.

(17) "Rejected" means a filing is:

- (a) not submitted in accordance with Utah laws and rules;
- (b) returned to the filer by the department with the reasons for rejection; and
- (c) not considered filed with the department.

(18) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long-term care, Medicare supplement, income replacement, specified disease, or vision.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted.

**R590-220-5. General Filing Information.**

- (1) Each filing submitted must be accurate, consistent,

complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) A licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

- (a) is not considered filed with the department;
- (b) must be submitted as a new filing; and
- (c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

- (i) when submitted;
- (ii) as a result of a complaint;
- (iii) during a regulatory examination or investigation; or
- (iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer shall include a description of the filing corrections.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description and include a description of the filing corrections.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-220-16 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

#### **R590-220-6. Filing Submission Requirements.**

(1) All filings must be submitted as an electronic filing.

(2) A filing must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4)(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing including:

- (A) the intent of the filing; and
- (B) the purpose of each document within the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the

filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance Filing Certification must be properly completed, signed, and attached to the Supporting Documentation tab. A false certification may subject the licensee to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

- (i) copy of domicile approval for the exact same filing;
- (ii) filing status information which includes:
  - (A) a list of the states to which the filing was submitted;
  - (B) the date submitted; and
  - (C) summary of the states' actions and their responses; or
  - (iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire; or

(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(f) Variable data.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(g) Utah Accident and Health Insurance Intake Survey.

(i) The intake survey must be properly completed, signed and attached to the Supporting Documentation tab for filings submitted with the type of insurance of "H15G," "H15I," "H16G," "H16I," "HORG02G," or "HORG02I."

(ii) If the intake survey is incomplete or not attached, the filing will be rejected.

(h) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule.

(i) Reports are exempt from the filing submission

requirement listed in Subsections R590-220-6(4)(c), (d), (f) and (g).

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and reports.

#### **R590-220-7. Procedures for Form Filings.**

(1) Forms in General.

(a) Forms are File and Use filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(d) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filing.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, outline of coverage, certificate, rider, endorsement, and actuarial memorandum.

(c) Only one policy filing for a single type of insurance may be filed, except as stated in Subsection R590-220-7(3)(d).

(d) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through N.

(4) Rider or Endorsement Only Filing.

(a) Up to three related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) The filing must include:

(i) A listing of all base policy form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base policy.

(d) Unrelated riders or endorsements may not be filed together.

(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy, rider, or an endorsement, the outline of coverage must be filed when the policy, rider or endorsement is filed.

#### **R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.**

(1) A filer submitting an individual accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Part 6, Accident and Health Insurance; and

(c) Rules R590-85, R590-126, R590-131, and R590-192.

(2) This section does not apply to filings for individual health benefit plans that are subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Rule R590-167. Individual health benefit plan filings are discussed in Section R590-220-10.

(3) Rate and rate documentation filings.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(4) Every individual accident and health policy, rider, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.

(a) A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description.

(b) Rates must be filed in accordance with the requirements of Section 31A-22-602, Rules R590-85, and R590-220.

(5) A filer submitting a long term care filing, including an endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

#### **R590-220-9. Additional Procedures for Group Market Form Filings.**

(1) A filer submitting a group accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Parts 6 and 7;

(c) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and

(d) Rules R590-76, R590-126, R590-131, R590-146, R590-148, R590-192, R590-233, and Section R590-220-10.

(2) Determine whether the group is an eligible group or a discretionary group.

(a) Eligible Group. A filing for an eligible group must include a completed Utah Accident and Health Insurance Group Questionnaire.

(i) A questionnaire must be completed for each eligible group under Sections 31A-22-503 through 507, and Subsection 31A-22-701(2).

(ii) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.

(b) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.

(i) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.

(ii) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(A) the existence of a verifiable group;

(B) that granting permission is not contrary to public policy;

(C) the proposed group would be actuarially sound;

(D) the group would result in economies of acquisition and administration which justify a group rate; and

(E) the group would not present hazards of adverse selection.

(iii) A discretionary group filing that does not provide authorization documentation will be rejected.

(iv) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.

(v) Adding additional types of insurance products to be offered, requires that the discretionary group be reauthorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.

(vi) The commissioner may periodically re-evaluate the group's authorization.

(vii) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.

(3) A filer submitting a long-term care filing, including a long-term care endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(4) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

#### **R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.**

This section contains instructions for filings subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

(1) A filer submitting health benefit plan filings that are subject to Title 31A, Chapter 30, is advised to review:

- (a) Title 31A, Chapter 8, Health Maintenance Organization and Limited Health Plans;
- (b) Title 31A, Chapter 22, Parts 6 and 7;
- (c) Title 31A, Chapter 30; and
- (d) Rules R590-76, R590-131, R590-167, R590-175, R590-176, R590-233, and R590-247.

(2)(a) Form Filing.(i) A health benefit plan form filing must include a rate manual.

(ii) If the rate manual was previously filed, provide documentation indicating the department's receipt.

(b) Rate Manual Filing.

(i) A rate manual that does not request a change in rating methodology is a File Before Use filing.

(ii) A change in rating methodology filing is a File for Approval filing.

(iii) A new and revised rate manual must:

- (A) include an actuarial certification signed by a qualified actuary;
- (B) be filed 30 days prior to use;
- (C) list the case characteristics and rate factors to be used;
- (D) be applied in the same manner for all health benefit plans in a class;
- (E) contain specific area factor and industry factors applicable in Utah;
- (F) include the method of calculating the risk load, including the method used to determine any experience factors;
- (G) include how the overall rate is reviewed for compliance with the rate restrictions; and
- (H) include detailed description of all classes of business, as provided in Section 31A-30-105.

(iv) Any case characteristic not listed in Subsection 31A-30-106(1)(h) requires prior approval of the commissioner.

(3) Health Benefit Plan Reports.

(a) Actuarial Certification.

(i) All individual and small employer licensees must file an actuarial certification as described in Section 31A-30-106 and Subsection R590-167-11(1)(a).

(ii) The report is due April 1 each year.

(b) Small Employer Index Rates Report.

All small employer licensees must file their index rates as of January 1 of the current year and preceding year, as required by Subsection 31A-29-117(2).

(i) The report must include:

- (A) the actual index rates; and
- (B) calculate the percentage change in these rates between the two years.

(ii) The report is due February 1 each year.

(c) Each report must be filed separately and be properly identified.

(d)(i) All health benefit plan reports must be filed with SERFF using a type of insurance of "H16I" or "H16G," and a filing type of "Report."

(ii) A Health Maintenance Organization must use "HOrg02I" or "HOrg02G" as the type of insurance and the filing type of "Report."

#### **R590-220-11. Additional Procedures for Medicare Supplement Filings.**

A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146. A Medicare supplement form filing that affects rates must be filed with all required rating documentation.

(1)(a) A licensee must file its Medicare Supplement Buyers Guide.

(b) If previously filed, indicate the filed date in the filing description.

(2) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Medicare supplement rates must comply with Section 31A-22-602, and Rules R590-146 and R590-85.

(d) A licensee shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(e) A rate revision request may not be used to satisfy the annual filing requirements of Subsection R590-146-14.C.

(3) Annual Medicare Supplement Reports.

(a) Medicare supplement reports are File and Use filings.

(b) Reports are due May 31 each year.

(c) Report of Multiple Policies.

(i) As required by Section R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the licensee has issued to a single insured.

(ii) The report is required each year listing each insured with multiple policies or must state "NO MULTIPLE POLICIES WERE ISSUED."

(d) Annual Filing of Rates and Supporting Documentation.

(i) An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with Subsection R590-146-14.C.

(ii) The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing.

(iii) Annual reports submitted with a request or any type of reference to a rate revision will be rejected.

(e) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies reports according to Subsection R590-146-14.B.

(f) Reports for Pre-Standardized Medicare supplement benefit plans and 1990 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS06," and a filing type of "Report."

(g) Reports for 2010 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS09," and a filing type of "Report."

(h) If Medicare supplement reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

**R590-220-12. Additional Procedures for Combination Policies or Endorsements and Riders Providing Life and Accident and Health Benefits.**

A filer submitting health and life combination policies, or health endorsements or riders, to life policies, is advised to review Rule R590-226.

(1) A combination filing is a policy, rider, or endorsement, which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are; an endorsement or rider, or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Insurance Division, and the Life Section of the Life, Property and Casualty Insurance Division.

(2) A combination filing must be submitted separately to both the Health Insurance Division and the Life Section of the Life, Property and Casualty Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For an endorsement or rider, the filing must be submitted to the appropriate division based on benefits provided in the endorsement or rider.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term life policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

**R590-220-13. Additional Procedures for Long Term Care Products.**

(1) A filer submitting long-term care product filings is advised to review:

(a) Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards;

(b) Rule R590-148; and

(c) Section R590-220-12.

(2) A long-term care form filing that affects rates must be filed with all required rating documentation.

(3) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Long-term care rates must comply with Rules R590-148 and R590-85.

(d) A licensee shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(4) Annual Long-term Care Reports.

(a) All four long-term care reports required by Section R590-148-25 must be submitted together as one filing.

(b) If all four reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

(c) If there is no information to report, the reporting form must state "NONE."

(d) Reports are due June 30 each year.

(e) The four reports shown below are required by Section R590-148-25.

(i) Replacement and Lapse Reporting Form.

(ii) Claims Denial Reporting Form.

(iii) Rescission Reporting Form.

(iv) Suitability Report Form.

(f) All long term care reports must be filed with SERFF using a type of insurance of "LTC06," and a filing type of "Report."

**R590-220-14. Criteria for Adding or Terminating Participating Providers.**

(1) Criteria for adding or terminating participating providers must be submitted electronically via SERFF using a type of insurance of "H21" and a filing type of "Report."

(2) The Filing Description must state "Preferred Provider Agreement," as required by Subsection 31A-22-617.1(1)(c).

**R590-220-15. Correspondence and Status Checks.**

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) SERFF tracking number.

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

**R590-220-16. Responses.**

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) attach the documents in Subsections R590-220-16(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

**R590-220-17. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-220-18. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

**R590-220-19. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: health insurance filings**

**February 22, 2010**

**Notice of Continuation March 12, 2009**

**31A-2-201**

**31A-2-201.1**

**31A-2-202**

**31A-22-605**

**31A-22-620**

**31A-30-106**



**R590. Insurance, Administration.****R590-256. Health Benefit Plan Internet Portal Solvency Rating.****R590-256-1. Authority.**

This rule is promulgated by the Insurance Department pursuant to Utah Code Sections:

- (1) 63G, Chapter 3, Utah Administrative Rule Making Act; and
- (2) 63M-1-2506(5) which requires the Insurance Department to establish a methodology establishing a calendar year solvency rating to be posted on the internet portal.

**R590-256-2. Purpose and Scope.**

- (1) The purpose of this rule is to establish the methodology for determining the solvency rating for each insurer who posts a health benefit plan on the Internet portal.
- (2) The scope of this rule applies only to insurers who post a health benefit plan on the internet portal.

**R590-256-3. Definitions.**

In addition to the definitions in Sections 31A-1-301 and 31A-17-601, the following definitions shall apply for the purpose of this rule:

- (1) "Insurer" means an insurer who posts a health benefit plan on the Internet portal under 63M-1-2504(2)(a).

**R590-256-4. Solvency Rating Methodology.**

- (1) An insurer's solvency rating shall fall within one of three tiers:
  - (a) Solvent;
  - (b) Hazardous; or
  - (c) Insolvent.
- (2) An insurer shall have a solvency rating of solvent if the insurer's annual risk based capital report demonstrates that the insurer is not in an action level event defined under Sections 31A-17-603 to 606.
- (3) An insurer shall have a solvency rating of hazardous if the insurer's annual risk based capital report demonstrates the insurer is in an action level event defined under Sections 31A-17-603 or 604.
- (4) An insurer shall have a solvency rating of insolvent if the insurer's annual risk based capital report demonstrates that the insurer is in an action level event defined under Sections 31A-17-605 or 606.

**R590-256-5. Enforcement Date.**

The Commissioner will begin enforcing this rule on the effective date of this rule.

**R590-256-6. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance internet portal  
March 10, 2010**

**63G-3  
63M-1-2506**

**R610. Labor Commission, Antidiscrimination and Labor, Labor.****R610-3. Filing, Investigation, and Resolution of Wage Claims.****R610-3-1. Authority.**

This rule is enacted under the authority of Sections 34-23-104, 34-28-9, 34-28-19 and 34-40-105.

**R610-3-2. Definitions.**

The following definitions are in addition to the statutory definitions specified in Sections 34-23-103, 34-28-2, and 34-40-102.

A. "Claim" means a properly completed Wage Claim Assignment Form, filed with the Division by a wage claimant.

B. "Claimant" means a person making a claim, as stated in subsection A.

C. "Commission" means the Labor Commission.

D. "Defendant" means a person against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and the personnel responsible for receiving, investigating and resolving claims.

G. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

H. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

I. "Mail" or "Mailed" means first class mailing sent to the parties of a wage claim or claim of retaliation, to the last known address on the Commission's record.

J. "Presiding Officer" includes those defended by Section 63G-4-103(1)(h)(i).

**R610-3-3. Exceptions.**

Public, general agricultural, household domestic, and certain other employments are excepted from the provisions of these rules pursuant to Section 34-28-1.

**R610-3-4. Filing Procedure and Commencement of Agency Action.**

A. For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63G-4-201(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer:

- a. vacation;
- b. holiday;
- c. sick leave;

d. paid time off; and

e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature or the signature of the Claimant's authorized representative.

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

1. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

**R610-3-5. Investigation.**

For the purpose of determining the validity or invalidity of the filed claim, the Division pursuant to Sections 34-28-9 and 34-28-10, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the claim;

C. Examine, copy, inspect, and summarize relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the claim;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make relevant inquiries necessary in making a preliminary decision.

**R610-3-6. Preliminary Findings.**

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the claim, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the claim and state the findings based on the information contained in the wage claim file.

1. If the claim has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which shall be complied with within ten working days from the date of the document.

2. If the claim has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the claim is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. A party may submit a request for review or request an

informal hearing. This request shall be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D. precludes a review or hearing.

**R610-3-7. Default Order.**

A. A hearing officer may issue an Order On Default And Order To Pay based on the Preliminary Finding issued by the Division.

B. An Order On Default And Order To Pay may be issued following an investigation and bypassing a Preliminary Finding if any of the following occur:

1. The Claimant is issued a non-negotiable check in the payment of wages in violation of Section 34-28-3(2).

2. The Defendant admits the validity of the claim.

3. The Defendant failed to respond to the allegations of the claim within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. The penalty provided for by Section 34-28-9(2) may be awarded in addition to the award for wages.

D. After issuance of the Order On Default And Order To Pay, the only agency review available is that specified in R610-3-11.

**R610-3-8. Agreements and Settlements.**

A. No provision of Title 34, Chapter 28, can be contravened by a mutual agreement between an employee and employer unless the agreement is approved by the Division.

B. Notice of settlement conference shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the conference. A continuance shall only be granted for good cause, at the option of the hearing officer.

C. In the event of settlement the parties shall sign a settlement agreement stating the terms of the settlement, and shall include:

1. A stipulation that in the event of breach of the agreement the Division may enter an Order enforcing the settlement agreement; and

2. Approval of the settlement agreement by a representative designated by the Division.

**R610-3-9. Hearings.**

A. Pursuant to Section 63G-4-202(1), the Division may resolve the claim for wages filed pursuant to R610-3-4 by holding an informal hearing subject to the provisions of Section 63-46b-5. This hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

B. Where the Division deems appropriate or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the hearing and shall specify if the hearing is an informal or a formal proceeding. Notice of hearing shall be mailed and shall constitute proper notice.

D. A continuance shall only be granted for good cause at the option of the hearing officer.

E. The hearing officer may at his or her option record a hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63G-4-203, and shall be promptly mailed to each of the parties. The Order issued may be:

1. An Order awarding payment to the Claimant and may include a penalty pursuant to Section 34-28-9(2), in addition to the wages determined due.

2. An Order For Dismissal terminating proceedings on the wage claim by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in R610-3-11.

**R610-3-10. Attorney Fees.**

A. Pursuant to Section 34-28-9(4)(b), attorney fees and costs shall be allowed to counsel employed by the commission, the attorney general or the county representing the commission in appeals when the plaintiff prevails and in judgment enforcement proceedings. Attorney fees shall be allowed in the amount of \$500 or one-third of the award, whichever is greater.

**R610-3-11. Agency Review.**

A. After issuance of an Order On Default And Order To Pay or of a hearing officer's Order, the only agency review available to a party is a request for reconsideration as specified in Section 63G-4-302.

B. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

**R610-3-12. Judicial Review.**

Judicial review of a wage claim Order is pursuant to Section 63G-4-402.

**R610-3-13. Declaratory Orders.**

As required by Section 63G-4-503, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Section 63G-4-503(6).

D. Administrative review of the Declaratory Order is per Section 63G-4-302, only.

**R610-3-14. Enforcement.**

A. Docketing of Order or final agency action as a lien.

1. An abstract of the final Order shall be docketed by the Division in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract shall be noted thereon and entered in the judgment docket pursuant to Section 34-28-9(3)(a), (b), and (c).

2. The docketing of an Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of an Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the plaintiff or the defendant resides, depending on the district in which the final Order is docketed, shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

**R610-3-15. Time.**

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing a period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

**R610-3-16. Retaliation.**

A. Section 34-28-19 prohibits an employer from retaliating against employees. Claims of unlawful retaliation shall be resolved as follows:

1. An employee alleging retaliatory action by his employer may file a complaint with the Division. The Division shall mail a copy of the complaint to the employer and allow ten working days for the employer to submit a written response to the complaint. Additionally, the Division may attempt to resolve the complaint by informal means.

2. After the time allowed for response and if informal resolution has been unsuccessful, the Division shall conduct a hearing to determine whether the employer has violated Section 34-28-19 by retaliating against the employee. The Division's determination shall be mailed to each party.

a. If the Division determines that no retaliation has occurred, it shall dismiss the employee's complaint.

b. If the Division determines retaliation has occurred, it

shall order the employer to end the retaliatory action and reimburse the employee for lost wages and benefits.

B. Right of Appeal:

1. The only agency review available to any party is a request for reconsideration as specified in Section 63G-4-302.

2. Reconsideration shall be based on the contents of the file and submitted within 20 days of the date of the issued order. No new evidence will be accepted.

3. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302 (3).

4. Judicial review of the order may be pursued as specified in Section 63G-4-402.

C. The Division may enforce any final order as provided in Section 34-28-9(3) and (4).

**R610-3-17. Bankruptcy.**

In the event the defendant files a petition with the U.S. Bankruptcy Court, the Division shall suspend its administrative action until the bankruptcy case is concluded or dismissed.

**R610-3-18. Deductions and Offsets.**

The following sums shall constitute lawful deductions or offsets from wages due an employee:

A. Sums deducted from wages pursuant to the Internal Revenue Code or other Federal tax provision;

B. Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act;

C. Sums deducted from wages pursuant to any Utah city, county, or state tax;

D. Sums deducted from wages as dues, contributions, or other fees to a labor, employee, professional, or other employer-related organization or association; and sums as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

E. Sums deducted from wages as payments, repayments, contributions, deposits, to a credit union, banking, savings, loan, trust or other financial institution, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

F. Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer, provided that the:

1. Employee has actual or constructive possession of the goods or services purchased; and

2. Employee's purchase is evidenced by the employee's written acknowledgment;

G. Sums deducted from wages for damages suffered by the employer due to the employee's negligence:

1. A potential deduction shall meet the following pre-conditions:

a. negligence and damages arise out of the course of employment;

b. employer has not received payments, compensation, or any form of restitution for the same monetary loss from an insurer, assurer, surety, or guarantor to cover the injuries, losses, or damages;

c. offset is reasonably related to the amount of the damage; and

d. damage is over and above wear and tear reasonably

expected in the normal course of business.

2. Methods of determining an employee's negligence and amount of damage are:

- a. by a judicial proceeding;
- b. by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or
- c. by any other provision allowed or required by law pursuant to Section 34-28-3(5).

H. Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment shall be honored by the Division;

I. Sums deducted from wages as repayment to the employer by the employee of advances or loans made to the employee by the employer, provided that the:

1. Advance or loan to the employee occurred while the employee was in the employ of the employer; and
2. Employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment;

J. Sums deducted from wages as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:

1. The employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the property of the employer;
2. The crime occurred during the employment relationship or out of the employment relationship; and
3. The property of the employer cannot or has not been reunited with the employer; or
4. The employee willfully and through his own admission did in fact destroy company property. An offset against the earned wages may be allowed at the hearing officer's discretion.

K. Sums deducted from the wages resulting from cash shortages, provided that the:

1. Employee gives written acknowledgment upon beginning employment that he or she shall be responsible for shortages;
2. Employee shall at the beginning of his or her work period be checked in or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification;
3. Employee at the end of the work period be checked out or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification; and
4. Employee be the sole and absolute user and have sole access to the register or cash amount from the time checked in under Subsection (2) until the time checked out under Subsection (3);

L. Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that the:

1. Employee's purchase and receipt of the items is evidenced by a written acknowledgment;
2. Employee has actual or constructive possession of the goods or items; and
3. Employer repurchase the items from the employee at the employee's option upon the termination of employment at a fair and reasonable price;

M. Sums deducted from wages as payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:

1. The item was assigned during the employment of the employee;
2. The employee gave written acknowledgment of the receipt of the item; and
3. The item was not returned to the employer upon termination.

#### **R610-3-19. Timely and Unconditional Payment of Wages.**

A. In case of a dispute over wages, the employer shall give written notice to the employee, of the amount of wages which he concedes to be due and shall pay that amount without condition within the time required by statute;

B. Acceptance by the employee of a payment made hereunder shall not constitute a release or waiver as to the balance of a claim for wages;

C. The employer shall not be entitled or permitted to deduct any sums where the employer has failed to make payment of wages within the time period required by statute.

#### **R610-3-20. Check Stubs.**

All lawful offsets enumerated in this rule shall be itemized on a statement or a detachable check stub and provided to the employee as required by Section 34-28-3(4).

#### **R610-3-21. Uniforms.**

A. Where the wearing of uniforms is a condition of employment, the employer shall furnish the uniforms free of charge.

1. The term "uniform" includes any article of clothing, footwear, or accessory of a distinctive design or color required by an employer to be worn by employees.

2. An article of clothing which is associated with a specific employer by virtue of an emblem (logo) or distinctive color scheme shall be considered a uniform.

B. The employer may request an amount, not to exceed the actual cost of the uniform or \$20, whichever is less, as a deposit on each uniform required by the employer. The deposit shall be refunded to the employee at the time uniform is returned.

#### **R610-3-22. Payment of Wages Via Pay Cards.**

A pay card is a stored value card that can be used at an ATM-type machine to access wages that are credited to the card. An employer may use a pay card to pay an employee's wages if the following conditions are met:

A. With one use, the employee shall be able to withdraw the full amount of earned wages without incurring a fee. "One use" means a single transaction.

B. The full amount of wages for a pay period shall be available for the employee via the pay card on the applicable payday.

C. On each payday, the employer shall provide the employee a statement of deductions from the employee's gross wages for the subject pay period. This statement shall be provided:

1. in writing, or
2. electronically, provided that the employee must be able to easily and immediately access the information and print a paper copy of the same, without cost.

#### **KEY: wages, minors, labor, time**

**March 24, 2010**

**Notice of Continuation November 30, 2006**

**34-23-101 et seq.**

**34-28-1 et seq.**

**34-40-101 et seq.**

**63G-4-102 et seq.**

**R616. Labor Commission, Boiler and Elevator Safety.****R616-4. Coal Mine Safety.****R616-4-1. Authority and Purpose.**

This rule is established pursuant to authority granted the Commission by 40-2-104 and 40-2-301(2) for the purpose of improving coal mine safety, preventing coal mine accidents, and improving coal mine accident response consistent with the Coal Mine Safety Act.

**R616-4-2. Definitions.**

As used in this rule, the terms listed below shall have the same definition as set forth in the Coal Mine Safety Act, as follows.

(1) "Adverse action" means to take any of the following actions against a person in a manner that affects the person's employment or contractual relationships:

- (a) discharge the person;
- (b) threaten the person;
- (c) coerce the person;
- (d) intimidate the person; or
- (e) discriminate against the person, including to discriminate in:

- (i) compensation;
- (ii) terms;
- (iii) conditions;
- (iv) location;
- (v) rights;
- (vi) immunities;
- (vii) promotions; or
- (viii) privileges.

(2) "Coal mine" means:

(a) the following used in extracting coal from its natural deposits in the earth by any means or method:

- (i) the land;
- (ii) a structure;
- (iii) a facility;
- (iv) machinery;
- (v) a tool;
- (vi) equipment;
- (vii) a shaft;
- (viii) a slope;
- (ix) a tunnel;
- (x) an excavation; and
- (xi) other property; and

(b) the work of preparing extracted coal, including a coal preparation facility.

(3) "Commission" means the Labor Commission created in 34A-1-103.

(4) "Commissioner" means the commissioner appointed under 34A-1-201.

(5) "Council" means the Mine Safety Technical Advisory Council created in 40-2-203.

(6) "Director" means the Director of the Utah Office of Coal Mine Safety appointed under 40-2-202.

(7) "Major coal mine accident" means any of the following (but not limited too) at a coal mine located in Utah:

- (a) a mine explosion;
- (b) a mine fire;
- (c) the flooding of a mine;
- (d) a mine collapse; or
- (e) the accidental death of an individual at a mine.

(8) "Mine Safety and Health Administration" and "MSHA" means the federal Mine Safety and Health Administration within the United States Department of Labor.

(9) "Office" means the Utah Office of Coal Mine Safety created in 40-2-201.

(10) "Unsafe condition" means a danger that reasonably could be expected to cause serious harm to a person or property.

**R616-4-3. Examining Coal Mines.**

(1) Pursuant to 34A-1-406 and other provisions of Utah Law, representatives of the Utah Labor Commission are authorized to enter places of employment, including coal mines, for purposes of "examining the provisions made for the health and safety of the employees in the place of employment."

(2) If the Director of the Office of Coal Mine Safety determines that the safety of an employee is or will be endangered by activities or conditions in a coal mine, the Director may:

(a) notify the employee and mine management of the danger and specify actions necessary to remedy the danger;

(b) notify the Mine Safety and Health Administration of the danger;

(c) notify other appropriate federal, state, and local government agencies; and

(d) take such other action as authorized by law to eliminate or mitigate the danger.

**R616-4-4. Accident Notification Requirements.**

(1) After the occurrence of any coal mine accident that is required by MSHA or regulations 30 CFR Part 50 to be immediately reported to MSHA, a coal mine operator shall first notify MSHA of the accident. Immediately after completing its report to MSHA, the coal mine operator shall then report the accident to the Office of Coal Mine Safety at telephone number 1-888-988-6463.

**R616-4-5. Emergency Response Training.**

(1) Beginning with the 2010 calendar year, each coal mine operator shall annually hold an in-person meeting with law enforcement, public safety and health care providers for the purpose of reviewing and refining coal mine emergency response plans. The Office of Coal Mine Safety shall be notified of and arrange to participate in each such meeting, but the inability of the Office or any local, state, and federal emergency response personnel to attend such a meeting shall not prevent the operator from proceeding with the meeting as scheduled.

**KEY: coal mines, safety**

**March 11, 2010**

**40-2-104  
40-2-301(2)**

**R628. Money Management Council, Administration.**  
**R628-11. Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository.**

**R628-11-1. Authority.**

This rule is issued pursuant to Section 51-7-18.1.

**R628-11-2. Scope.**

This rule applies to all qualified depository institutions at which uninsured public funds may be held.

**R628-11-3. Purpose.**

This rule establishes a formula for determining the maximum amount of uninsured public funds that can safely be held by any qualified depository. The rule defines capital for each class of qualified depository institution, establishes a formula for calculating the maximum amount of uninsured public funds which can be held at a qualified depository institution, establishes a schedule for reduction of uninsured public deposits based on risk to public treasurers and establishes the frequency of public funds allotment adjustments.

**R628-11-4. Definitions.**

For the purposes of this rule:

A. "Tier one capital" means:

(1) For a federally insured commercial bank, thrift institution, industrial loan corporation or a savings and loan association, the same as defined in the Federal Deposit Insurance Act in CFR Chapter III Section 325.2 or the Office of Thrift Supervision in CFR Chapter V Section 565.2;

(2) For a federally insured credit union, the sum of undivided earnings, regular reserves, appropriations of undivided earnings referred to as "other reserves", and net income not already included in undivided earnings.

C. "Deposits" means: balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

D. "Out of State" means: in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.

E. "Maximum amount" means: the amount of deposits in excess of the federal deposit insurance limit.

F. "Qualified depository" means: a Utah depository institution as defined in Subsection 7-1-103(36) or a out of state depository institution as defined in Subsection 7-1-103(25) which may conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the Federal Government and which has been certified by the Commissioner of Financial Institutions as having met the requirements to receive uninsured public funds.

G. "Transaction account" means: a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by check or other negotiable instrument, a payment order of withdrawal, a telephone transfer or other electronic transfer or by any other means or device to make payments or transfer to third persons. This term includes demand deposits, NOW accounts, savings deposits subject to automatic transfers, and share draft accounts.

I. "Utah depository institution" means: a depository institution which is organized under the laws of, and whose home office is located in, this state or which is organized under the laws of the United States and whose home office is located in this state.

**R628-11-5. General Rule.**

A. Maximum Insured Public Funds

Any qualified depository may accept, receive, and hold

deposits of public funds without limitation, if the total amount of deposits from each public treasurer does not exceed the applicable federal depository insurance limit.

B. Maximum Deposits in Excess of the Federal Insurance Limits For Qualified Utah Depository Institutions

(1) For all qualified Utah depository institutions which receive a qualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, and for all qualified Utah depository institutions which do not have an audit conducted by an independent certified public accountant, the maximum amount of uninsured public funds which may be held shall be according to the following schedule:

TABLE 1

Ratio of Tier one Capital to Total Assets	Uninsured Public Funds Allotment		
5.0% or more	One	X	Capital
4.00% to 4.99%	.5	X	Capital
Less than 4.00%	None		

(2) A qualified Utah depository institution which receives an unqualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, may submit the audit report within 100 days of the date of the audit to the Department of Financial Institutions for review and the Commissioner of Financial Institutions must authorize that the ratios of Tier one capital to total assets applicable to the institution submitting the audit for determining the maximum amount of uninsured public funds allowed may be according to the following schedule:

TABLE 2

Ratio of Tier one Capital to Total Assets	Uninsured Public Funds Allotment		
5% or more	1.5	X	Capital
4.00% to 4.99%	.75	X	Capital
Less than 4.00%	None		

C. A qualified out-of-state depository institution will be treated as a qualified Utah depository subject to all the provisions of this section in determining its uninsured public funds allotment except that the uninsured public funds allotment will be reduced by multiplying by a factor of total deposits outstanding at Utah branches of the institution divided by the total deposits at the institution. Nothing in R628-11 shall prohibit an out-of-state depository institution from qualifying as a permitted out-of-state depository in accordance with R628-10.

**R628-11-6. Responsibility to Monitor Balances.**

Deposits in qualified depositories which are limited by R628-11-5(B) to the amount of federal deposit insurance must be monitored on a daily basis to assure that no public treasurer has deposit balances in excess of the federal insurance limit. The public treasurer making deposits and the qualified depository accepting deposits shall both be responsible to assure that the depositor's combined balance of all accounts stays within the federal insurance limit.

**R628-11-7. Collateralization of Excess Uninsured Public Funds.**

Pursuant to Section 51-7-18.1(5), the Money Management Council may require a qualified depository to pledge collateral security for deposits of uninsured public funds which exceed the uninsured public funds allotment established by this rule. Any pledging of collateral security required by the Money Management Council shall be in accordance with the provisions

of the Money Management Act and the rules of the Money Management Council.

**R628-11-8. Frequency of Adjustment to the Uninsured Public Funds Allotment.**

A. The uninsured public funds allotment for each qualified depository shall be established quarterly by the Council, based on the reports of condition filed with the Commissioner as of the close of the preceding quarter. The uninsured public funds allotments shall be established in accordance with the following:

TABLE 3

Report of Condition As Of:		Effective Date of Allotment	
December	31	April	1
March	31	July	1
June	30	October	1
September	30	January	1

B. The Money Management Council may make interim adjustments in a qualified depository's uninsured public funds allotment if material changes in a qualified depository's financial condition have occurred or if there is a formal enforcement action by the federal or state regulator. These interim adjustments may include but are not limited to reducing a qualified depository's uninsured public funds allotment to zero if there is not sufficient collateral to cover uninsured public funds.

C. Any qualified depository that becomes subject to a formal enforcement action by any federal regulator shall notify the Council within twenty-four hours of the publication of the action taken by a federal regulator. Failure of a qualified depository to comply with this requirement to notify the Council may result in action taken by the Council to require collateralization of uninsured public funds in accordance with Section 51-7-18.1(5) and Section R628-11-7.

**R628-11-9. Right to Petition the Council for Review.**

A qualified depository may petition the Money Management Council in writing for review and reconsideration of its allotment within 10 business days of written notice of the establishment or modification of its uninsured public funds allotment. The Money Management Council shall rule on any petition for review and reconsideration at its next regularly scheduled meeting.

**R628-11-10. Notification of Public Treasurers.**

Within 10 business days of the close of each calendar quarter, the Money Management Council shall cause a list of qualified depository institutions and the currently effective uninsured public funds allotment to be prepared and mailed to all public treasurers.

**KEY: financial institutions, banking law  
March 24, 2010  
Notice of Continuation October 12, 2005**

51-7-18.1(2)



**R652. Natural Resources; Forestry, Fire and State Lands.****R652-120. Wildland Fire.****R652-120-100. Authority.**

This rule implements Article XVIII of the Utah Constitution and provides for the issuance of burning permits, the establishment of limited suppression areas, and conduct of prescribed burns under the authority of Sections 65A-8-101 and 65A-8-211.

**R652-120-200. Burning Permits.**

1. Burning permits shall be issued only by the following authorized officials: state forester, his staff, and persons designated by the state forester. Burning permits are required for open fires during the closed fire season as specified in Section 65A-8-211 and during any extension of the closed fire season proclaimed by the state forester.

2. The permit form, provided by the state forester, shall be filled out completely and in accordance with instructions determined and furnished by his office.

3. Permittees shall comply with any written restrictions or conditions imposed with the granting of the permit.

4. The permittee shall sign the permit form.

5. Burning permits will be issued only when in compliance with the Utah Air Conservation Regulations. The following requirements must be met with each burning permit issued:

(a) The permit is not valid and operative unless the Clearing Index is 500 or above. The clearing index is determined daily by the U.S. Weather Bureau and available from county health offices, the State Forester's Office or Area Offices of the Utah State Department of Health.

(b) A permit may be extended one day at a time, without inspection upon request to the issuing officer. The request must be made before the expiration of the permit.

6. Agriculture has a limited exemption to open burning restrictions for the Division of Forestry, Fire and State Lands rules as indicated in Section 65A-8-211 and the Utah Air Conservation Regulations as outlined in Section 19-2-114.

7. Burning permits shall not be issued when red flag conditions exist or are forecasted by the National Weather Service. Every permittee is required to contact the National Weather Service to assure that a red flag condition does not exist or is not forecasted. Permits are not valid or operative during declared red flag conditions.

**R652-120-300. Limited Suppression Areas.**

1. The division may establish fire management areas where the level and degree of suppression activities are to be commensurate with the value of the resources within the fire management area.

2. Fire management plans shall be available for public review and comment prior to implementation.

3. County commission approval is required for any fire management plan that provides for limited fire suppression action on private lands within a fire management area.

**R652-120-400. Prescribed Fire.**

1. All prescribed burns utilizing division assistance other than permitting must have a written burn plan that has been reviewed and approved by the division. Burn plans shall include at a minimum information to determine management objectives and procedures to attain the objectives. Data will be provided to deal with safety concerns and smoke management. The burn plan will detail needs to insure the prescribed burn occurs within prescription.

2. A private landowner or state lessee/permittee receiving assistance on a prescribed fire shall supply resources specified in the burn plan.

3. Fire-fighting equipment placed by the division in any county for fire protection purposes cannot be required to assist

or be fully committed to a prescribed fire, but may be utilized as available.

**R652-120-500. Management for Cultural Resources and Threatened and Endangered Species.**

Cultural resources, paleontological resources, and threatened and endangered species which may be affected by a proposed prescribed fire or within a fire management plan will be considered, protected or mitigated, as may be required and practical.

**KEY: administrative procedure, burns, permits, endangered species**

**1989  
Notice of Continuation April 1, 2010**

**65A-8-101  
65A-8-211**

**R657. Natural Resources, Wildlife Resources.****R657-15. Closure of Gunnison, Cub and Hat Islands.****R657-15-1. Purpose and Authority.**

Under authority of Section 23-21a-3, this rule provides for the management of Gunnison, Cub, and Hat islands for the protection and perpetuation of the American white pelican, *Pelicanus erythrorhynchos*, and other avian species.

**R657-15-2. Closed Areas.**

(1) The following areas are closed to air, water, and land trespass as a conservation measure to protect colonial bird nesting areas:

(a) Gunnison and Cub islands, located in Sections 9, 10, 15 and 16, Township 7 North, Range 9 West, Salt Lake Base and Meridian; and

(b) Hat Island, located in Section 24, Township 4 North, Range 7 West, Salt Lake Base and Meridian.

(2) This closure encompasses all of Gunnison, Cub, and Hat islands and the surrounding waters and beaches of the Great Salt Lake one mile in every direction from the 4200-foot mean sea level elevation shoreline of Gunnison, Cub, and Hat islands.

(3) The provisions of this rule do not apply to division personnel while performing their official duties, or to certified peace officers and emergency personnel acting under their direction when engaged in exigent law enforcement activities or emergency rescue operations.

**KEY: wildlife, birds, conservation, wildlife management**  
**July 5, 2005** **23-21a-3**  
**Notice of Continuation March 9, 2010**

**R657. Natural Resources, Wildlife Resources.****R657-21. Cooperative Wildlife Management Units for Small Game and Waterfowl.****R657-21-1. Purpose and Authority.**

Under authority of Section 23-23-3, this rule provides the procedures, standards, and requirements for Cooperative Wildlife Management Units for the hunting of small game and waterfowl.

**R657-21-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "BLM" means Bureau of Land Management.

(b) "CWMU" means Cooperative Wildlife Management Unit.

(c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependent children.

(d) "Small game" means, for purposes of this rule only, band-tailed pigeon, cottontail rabbit, grouse, mourning dove, partridge, pheasant, ptarmigan, quail, and snowshoe hare.

**R657-21-3. Operation by Landowner Association.**

(1)(a) Cooperative Wildlife Management units shall be operated by a landowner or landowner association that owns land within the CWMU.

(b) Any person hunting on a CWMU must comply with all rules established by the Wildlife Board.

(2)(a) Cooperative Wildlife Management units organized for hunting small game and waterfowl shall consist of private land.

(b) The minimum acreage accepted for a CWMU is 320 contiguous acres.

(3)(a) Seventy-five percent of the enrolled land shall be open to hunting.

(b) All land open to private hunters shall be open to public hunters.

(c) All hunters shall be given an equal opportunity.

**R657-21-4. Application for Certificate of Registration.**

(1) Applications for a CWMU are available from division offices.

(2) In addition to the application, the landowner or landowner association must provide:

(a) a petition containing the dated signature and acreage of each participating landowner agreeing to terms of this rule;

(b) two original 1:100,000 scale BLM Surface Management Status maps showing all interior and exterior boundaries, lands enrolled and not enrolled within the exterior boundaries, and the county identification tax numbers; and

(c) a \$5 non refundable application fee.

(3) The division may return any application that is incomplete or completed incorrectly.

(4) Applications must be completed and returned to the respective division regional office, in which the CWMU is located, 60 days prior to the applicable hunting season.

(5)(a) Upon receipt of the completed application, the division may issue a certificate of registration to a landowner or landowner association to operate a CWMU.

(b) Division review of the application may require up to 45 days.

(c) If an application is rejected, the division shall provide the landowner or landowner association with written notification of the reasons for rejection within 30 days from the date of rejection.

(6) Certificates of registration are issued annually and are effective from the date of issuance through June 30 of the following year.

**R657-21-5. Renewal of a Certificate of Registration.**

(1)(a) The landowner or landowner association may renew the certificate of registration for the CWMU by completing and submitting a renewal application, CWMU authorization sales report and a non refundable \$5 renewal fee.

(b) The renewal application must be submitted at least 60 days prior to the applicable seasons.

(2) Any changes from the previous year's certificate of registration must be indicated on the renewal application.

(3)(a) If the landowner or landowner association requests additional land to be included in the CWMU, the application must contain the dated signature of each additional landowner, the county identification tax numbers of the additional land, and two 1:100,000 scale BLM Surface Management Status maps showing the new proposed interior and exterior boundaries.

(b) If the landowner or landowner association requests land to be withdrawn from the CWMU, the application must include a copy of the previously submitted petition with the appropriate landowners' signatures deleted and two 1:100,000 scale BLM Surface Management Status maps showing the land to be withdrawn and the new proposed interior and exterior boundaries.

**R657-21-6. Cooperative Wildlife Management Unit Agents.**

(1) A landowner or landowner association may appoint one CWMU agent per 100 acres up to a maximum of 30 agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent shall wear or each agent shall possess a form of identification prescribed by the Wildlife Board, which indicates that the person is a CWMU agent.

(3) A CWMU agent may refuse entry onto enrolled private land within a CWMU to any person, except the landowner, landowner association members and landowner association operators, who:

(a) does not have a CWMU authorization;

(b) endangers, or has endangered, human safety;

(c) damages, or has damaged, property within the CWMU;

or

(d) fails, or has failed to, comply with reasonable guidelines and rules of the landowner or landowner association.

**R657-21-7. Cooperative Wildlife Management Unit Authorizations.**

(1) At least 50% of the CWMU authorizations shall be offered for sale to the general public at the times and places designated on the application for the certificate of registration.

(2) Cooperative Wildlife Management Unit Authorizations may not be sold more than 15 days before the start of the first applicable hunting season.

(3) The division shall provide, to the public, a complete list of the current year's CWMUs, wildlife to be hunted, dates, time, place and number of CWMU authorizations for public sale at least 15 days before the first applicable hunting season.

(4) A CWMU authorization entitles the holder to hunt only small game and waterfowl within the CWMU as specified on the CWMU authorization.

**R657-21-8. Cooperative Wildlife Management Unit Authorization Numbers.**

(1)(a) The division and landowner or landowner association, acting jointly, shall determine the number of CWMU authorizations available for each CWMU.

(b) If the division and the landowner or landowner association disagree over the number of CWMU authorizations, the Wildlife Board may mediate and determine the number of CWMU authorizations to be issued.

(2)(a) The division and the landowner or landowner association, acting jointly, shall determine the cost of the

CWMU authorizations.

(b) Cooperative Wildlife Management Unit Authorization fees should not be so prohibitively expensive that buyers resist purchase of the CWMU authorizations available for general public sale.

**R657-21-9. Season Dates.**

Season dates for hunting on a CWMU shall be within the general statewide season dates for each small game and waterfowl species as specified in the annual proclamations of the Wildlife Board for taking upland game and waterfowl.

**R657-21-10. Bag and Possession Limits.**

Bag and possession limits on a CWMU shall be the same as the bag and possession limits for each small game and waterfowl species as specified in the annual proclamations of the Wildlife Board for taking upland game and waterfowl.

**R657-21-11. Rights-of-Way.**

(1) Each landowner or landowner association shall:

(a) clearly post all boundaries of the CWMU every 1,320 feet:

(i) including all corners, roads, trails, gates, and rights-of-way entering the unit;

(ii) with signs provided by the division; and

(iii) provide a written copy of guidelines and maps of the CWMU to each CWMU authorization holder.

(2) A landowner or landowner association may not restrict established public access to public or private land that is enclosed by the CWMU.

**R657-21-12. Habitat Improvement.**

(1) The Wildlife Board encourages landowners or landowner associations to improve wildlife populations by developing wildlife habitat on their lands using some of the funds received from the CWMU authorization sales.

(2)(a) The division may provide technical assistance, seed and seedlings, species specific habitat information and wildlife stock, and may cooperate in water development projects for wildlife after the landowner or landowner association has written an approved Wildlife Habitat Management Plan.

(b) The Wildlife Habitat Management Plan may be in the form of a memorandum of understanding between the landowner or landowner association and the division.

**KEY: wildlife, small game, wildlife law  
September 6, 2005  
Notice of Continuation March 9, 2010**

23-23-3

**R657. Natural Resources, Wildlife Resources.****R657-33. Taking Bear.****R657-33-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

**R657-33-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal, mineral or plant materials.

(b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(c) "Bear" means *Ursus americanus*, commonly known as black bear.

(d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(e) "Compensation" means anything of economic value in excess of \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing bear for any purpose.

(f) "Cub" means a bear less than one year of age.

(g) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(h) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(i) "Green pelt" means the untanned hide or skin of a bear.

(j) "Limited entry hunt" means any hunt listed in the hunt table, published in the proclamation of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include pursuit only.

(k) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(l) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(m) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(n) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

(o) "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

(i) possesses a pursuit permit issued for that particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in R657-33-26(2).

(p)(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to

process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is corrected before the deadline through the application correction process.

(q) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

(r) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

**R657-33-3. Permits for Taking Bear.**

(1)(a) To take a bear, a person must first obtain a valid limited entry bear permit for a specified hunt unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit may pursue bear without a pursuit permit while hunting on the unit for which the take permit is valid, provided the person is the dog handler.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

(4) To obtain a limited entry bear permit, a person must possess a Utah hunting or combination license.

**R657-33-4. Permits for Pursuing Bear.**

(1)(a) To pursue bear without a limited entry bear permit, the dog handler must:

(i) obtain a valid bear pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(b) A bear pursuit permit or exemption therefrom does not allow a person to kill a bear.

(2) Residents and nonresidents may purchase bear pursuit permits consistent with the requirements of this rule and the proclamations of the Wildlife Board.

(3) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

**R657-33-5. Hunting Hours.**

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

**R657-33-6. Firearms and Archery Equipment.**

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take bear:

- (a) a crossbow, except as provided in Rule R657-12;
- (b) arrows with chemically treated or explosive arrowheads;
- (c) a mechanical device for holding the bow at any increment of draw;
- (d) a release aid that is not hand held or that supports the draw weight of the bow; or
- (e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained a limited entry bear archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery bear hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

#### **R657-33-7. Traps and Trapping Devices.**

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

#### **R657-33-8. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

#### **R657-33-9. Prohibited Methods.**

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial

or aquatic vehicle, including snowmobiles and other recreational vehicles.

#### **R657-33-10. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

#### **R657-33-11. Party Hunting.**

A person may not take a bear for another person.

#### **R657-33-12. Use of Dogs.**

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear provided he or she possesses:

(a) a valid limited entry bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the dog handler must have:

(a) a limited entry bear permit issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry bear permit for the area; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry bear permit for the area.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in proclamation open to pursuit;

(b) a limited entry bear permit only during the season and in the area designated by the Wildlife Board in proclamation for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in proclamation open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit seasons as established by the Wildlife Board in proclamation.

#### **R657-33-13. Certificate of Registration Required for Bear Baiting.**

(1) A certificate of registration for baiting must be

obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) A new certificate of registration must be obtained prior to moving a bait station. All materials used as bait must be removed from the old site prior to the issuing of a new certificate of registration.

(5) The following information must be provided to obtain a Certificate of Registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(6)(a) Any person interested in baiting on lands administered by the U.S. Forest Service or Bureau of Land Management must verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a Certificate of Registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

- (i) designated Wilderness Areas;
- (ii) heavily used drainages or recreation areas; and
- (iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.

(7) A handling fee must accompany the application.

(8) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(9) Any person tending a bait station must be listed on the certificate of registration.

#### **R657-33-14. Use of Bait.**

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use no more than two bait stations. The bait station(s) may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the proclamation of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

(6) Violations of this rule and the proclamation of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

#### **R657-33-15. Tagging Requirements.**

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

#### **R657-33-16. Evidence of Sex and Age.**

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

#### **R657-33-17. Permanent Tag.**

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

#### **R657-33-18. Transporting Bear.**

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

#### **R657-33-19. Exporting Bear from Utah.**

(1) A person may export a legally taken bear or its parts if that person has a valid permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

#### **R657-33-20. Donating.**

(1) A person may donate protected wildlife or their parts

to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

- (a) the number and species of protected wildlife or parts donated;
- (b) the date of donation;
- (c) the license or permit number of the donor and the permanent possession tag number; and
- (d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

**R657-33-21. Purchasing or Selling.**

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a green pelt, gall bladder, tooth, claw, paw or skull of any bear.

**R657-33-22. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

**R657-33-23. Livestock Depredation.**

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation, and that specialist or another agency employee may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

- (a) any weapon authorized for taking bear; or
- (b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating bear and must be verified by Wildlife Services or division personnel.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take

depredating bear as needed.

**R657-33-24. Questionnaire.**

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, determine harvest success and other valuable information.

**R657-33-25. Taking Bear.**

(1)(a) A person who has obtained a limited entry bear permit may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.

(b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.

(2)(a) A person may not take or pursue a cub, or a sow accompanied by cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.

(b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.

(5) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

**R657-33-26. Bear Pursuit.**

(1)(a) Except as provided in rule R657-33-3(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

- (i) kill a bear; or
  - (ii) pursue bear for compensation.
- (c) A person may pursue bear for compensation only as provided in Subsection (2).

(d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

- (i) receives compensation from a client or customer to pursue bear;
- (ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;
- (iii) possesses on his or her person the Utah hunting guide or outfitter license;
- (iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and
- (v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

- (i) receives compensation from a client or customer to pursue bear;
- (ii) is accompanied by the client or customer at all times during pursuit; and
- (iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.



(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the proclamations of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the proclamations of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in proclamation.

(6) The Wildlife Board may establish or designate in proclamation restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

(i) possesses a pursuit permit issued for the particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry bear permit; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The Division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in proclamation; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(9) If eligible, a person who has obtained a bear pursuit

permit may also obtain a limited entry bear permit.

(10) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

#### **R657-33-27. General Application Information.**

(1) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a bear hunting permit.

(2) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

(3) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.

#### **R657-33-28. Waiting Period.**

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

#### **R657-33-29. Application Procedure.**

Limited entry bear permits are issued pursuant to R657-62.

#### **R657-33-30. Fees.**

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

#### **R657-33-31. Drawings and Remaining Permits.**

Remaining limited entry bear permits are issued pursuant to R657-62.

#### **R657-33-32. Bonus Points.**

Bonus points are accrued and used pursuant to R657-62-8.

#### **R657-33-33. Refunds.**

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

#### **R657-33-34. Duplicate License and Permit.**

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

#### **KEY: wildlife, bear, game laws**

**March 25, 2010**

**Notice of Continuation December 11, 2007**

**23-14-18**

**23-14-19**

**23-13-2**

**R708. Public Safety, Driver License.****R708-32. Uninsured Motorist Database.****R708-32-1. Purpose.**

The purpose of this rule is to define the procedures which will be used to administer the provisions of the "database" and the information and format in which it will be available.

**R708-32-2. Authority.**

This rule is promulgated in accordance with the Uninsured Motorist Database Program ("database") as required by Section 41-12a-803(7).

**R708-32-3. Definitions.**

(1) "Uninsured Motorist" means a driver who operates a vehicle in violation of the provisions of Title 41, Chapter 12a.

(2) "Database" means the Uninsured Motorist Identification Database created as per Section 41-12a-803.

(3) The terms "division" and "program" are as defined in Section 41-12a-802.

**R708-32-4. Access.**

(1) In accordance with Section 41-12a-803, insurance "status" information will be provided only to authorized personnel of federal, state and local governmental agencies who have access through dispatchers to the Driver License and Motor Vehicle Division's computer information screens (1027 and 1028) and to financial institutions, as defined in Section 7-1-103, for the purpose of protecting a bona fide security interest in a motor vehicle.

(2) Authorized personnel seeking information from this database will be limited to receiving the following responses:

(a) YES = Strong indication of mandatory insurance in force;

(b) NO = Strong indication mandatory insurance is not in force;

(c) EXEMPT = Vehicle is exempt from mandatory auto insurance, such as farm vehicles;

(d) NOT FOUND = Vehicle not part of insurance database; and

(e) NOT AVAILABLE = Communications with computer interrupted.

(3) Access to additional information other than "YES", "NO", "EXEMPT", "NOT FOUND," or "NOT AVAILABLE", shall be limited to the following persons who shall sign a Certificate of Understanding:

(a) Financial Responsibility Section Manager and employees;

(b) Driver License Division Director, Deputy Director, and Bureau Chiefs; and

(c) Other employees authorized by the Driver License Division Director, Deputy Director or Bureau Chiefs.

(4) Additional information, if available, may include:

(a) the vehicle owner's name and address;

(b) date of birth;

(c) driver license number;

(d) license plate number;

(e) vehicle identification number;

(f) insurance company name;

(g) policy number; and

(h) issue and expiration dates of the owner's vehicle insurance policy.

**KEY: uninsured motorist database****August 8, 2006****41-12a-803(7)****Notice of Continuation March 25, 2010**

**R708. Public Safety, Driver License.****R708-36. Disclosure of Personal Identifying Information in MVRs.****R708-36-1. Purpose.**

One of the responsibilities of the division is to compile information regarding the driving record of licensed drivers in Utah. This information is searched, compiled and summarized by the division in a report called a Motor Vehicle Record (MVR). The MVR contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63G, Chapter 2 (Government Records Access and Management Act). However, such laws provide for limited public disclosure of such information because the Division Director has determined it is in the best interest of public safety in order to protect the public against fraud and misuse of the MVR. It is the purpose of this rule to set forth the contents of the MVR and the procedure to be followed in disclosing it.

**R708-36-2. Authority.**

This rule is authorized by Section 53-3-109(5).

**R708-36-3. Content of MVRs.**

(1) The personal identifying information contained in an MVR consists of the driver name, driver license number, and in certain circumstances, the driver address.

(2) The driver name and driver license number will appear on every MVR released by the division to qualified requesters.

(3) Driver address will appear only on MVRs released to licensed private investigators or investigative agencies certified by the Department of Public Safety. The division may make exceptions to this procedure, provided the exception falls under a permissible use set forth in the DPPA.

(4) All MVRs will contain the driver's 5-digit zip code, date of birth, military status, license status, license issue/expiration dates, license class, endorsements, reportable arrests, convictions, reportable department actions, and reportable failure to appear/comply notations.

**R708-36-4. Disclosure Procedure.**

(1) When properly requested to do so the division will search its driver license files and then compile and furnish an MVR on any person licensed in the state.

(2) MVRs shall only be released to qualified requesters in accordance with the DPPA.

(3) In order to receive an MVR, the requester must:

(a) provide acceptable proof of identification such as a driver license, official identification card, or other official documentation. The division may also require other forms of identification as needed;

(b) declare one or more permissible uses within the DPPA under which the requester is qualified to receive the information. The division will provide a list of the permissible uses for the requester to review if necessary. The division may determine that the requester is not entitled to receive an MVR if the division has reason to believe the declaration is invalid, or that any other condition in this rule has not been met;

(c) provide sufficient information to locate the driver records;

(d) pay appropriate fees in a manner approved by the division; and

(e) agree to comply with state and federal laws regulating re-sale and further disclosure of information on an MVR.

**R708-36-5. Bulk Requests.**

Bulk customers (generally those requesting 50 or more MVRs at a time) may meet the conditions in this rule by contracting with the division.

**R708-36-6. Electronic Transactions.**

Requests for MVRs may be transacted electronically as approved by the division.

**KEY: driver license, motor vehicle record, privacy**

**June 1, 2000**

**53-3-109(5)**

**Notice of Continuation March 30, 2010**

**R708. Public Safety, Driver License.****R708-37. Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests.****R708-37-1. Purpose.**

The purpose of this rule is to establish standards and procedures to certify instructors of commercial driver training schools and testing only schools to administer driving skills tests.

**R708-37-2. Authority.**

This rule is authorized by Section 53-3-510.

**R708-37-3. Definitions.**

(1) "Agreement" means a written agreement between the state and a third-party tester agreeing to the conditions contained in this rule.

(2) "Cancellation" means action taken by the division that voids an instructor's testing certification.

(3) "Certification" means the process by which commercial driver training instructors are certified by the division to administer driving skills tests.

(4) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons to drive motor vehicles, and to prepare applicants for examinations prerequisite to their obtaining driver licenses or learner permits.

(5) "Commercial driver training vehicle" means a motor vehicle equipped with a second functioning foot brake and inside and outside mirrors which are positioned for use by the instructor for the purpose of observing rearward.

(6) "Corporation" means a business incorporated under the laws of a state or other jurisdiction.

(7) "Division" means the Driver License Division of the Utah Department of Public Safety.

(8) "Instructor" means a person who is authorized to teach driver education in an approved commercial driver training school.

(9) "Partnership" means an association of two or more persons who co-own and operate a commercial driver training school or a testing only school.

(10) "Probation" means action taken by the department which includes a period of close supervision as determined by the division.

(11) "Suspension" means action taken by the division that temporarily voids an instructor's testing certification. The certification may be reinstated whenever the instructor follows a division-approved plan and complies with reinstatement procedures.

(12) "Test" means a driving skills test approved by the division.

(13) "Tester" means an instructor who is certified to administer driving skills tests.

**R708-37-4. Application Procedures.**

(1) An instructor shall become a certified tester by making application and by meeting the requirements of this rule. In order to become a certified tester, an individual must be certified as a commercial driver education instructor in accordance with R708-2-6,8 and 9. Application shall be made on a form furnished by the division and shall include the following information:

(a) the name of the instructor who is applying for tester certification;

(b) the name and address of the commercial driver training or testing only school where the instructor is employed; and

(c) the signature of the school owner indicating approval of the instructor for tester certification and consent to the use of

school vehicles, facilities, etc. for the purpose of testing.

(2) The instructor must enter into a written agreement with the division. The agreement must contain provisions that:

(a) the tester cannot maintain employment with more than one commercial driver training school or testing only school at a time;

(b) allow the division to conduct random examinations, inspections, and audits without prior notice during normal business hours; and

(c) allow the division to conduct on-site inspections annually or when deemed necessary by the division.

(3) The division will offer training to instructors regarding minimum standards which must be met in the administration and scoring of tests.

(4) The division may authorize, train, and approve persons outside the division to provide the training. Instructors are responsible for any costs associated with training provided by approved organizations, agencies, or individuals.

(5) The division shall maintain a list of approved testers and shall assign testers identification numbers.

**R708-37-5. Medical Screening.**

(1) Prior to administering a driving skills test, the tester shall screen students for visual acuity, visual field and physical or emotional conditions which may compromise public safety. Screening may not be performed over the telephone. An employee of the tester who is not certified as an instructor or tester may not perform medical or visual screening unless approved in writing by the division.

(a) Students must have 20/40 or better visual acuity in one eye and a visual field of 90 degrees. Students with less than the required visual acuity and/or visual field shall be referred to a licensed medical practitioner for further consideration.

(b) Students must answer all questions on a health questionnaire approved by the Driver License Medical Advisory Board and sign a statement of affirmation of truth. Students indicating a physical or emotional condition on the questionnaire shall be referred to a licensed medical practitioner for further consideration. Health questionnaires shall be provided by the division and maintained for three years by the commercial driver training school or testing only school as a part of the school's records.

(c) The driver will not be required to submit to a medical screening if one of the following is provided to the tester:

(i) a verification of medical fitness approval form as completed by a commercial driver education instructor; or

(ii) a driver receipt issued by the division that indicates that the medical screening has taken place in the division.

**R708-37-6. Tests.**

(1) When testing students for driver licenses, instructors certified as testers shall administer tests developed in accordance with these rules which meet or exceed minimum division testing standards.

(2) Tests shall be conducted:

(a) on test routes approved by the division;

(b) by certified testers who are also certified instructors;

(c) in vehicles provided by commercial driver training schools or testing only schools which have been inspected and approved for use in driver training by the division or in a personal vehicle provided by the applicant. Each school shall notify the division of any vehicle added to or deleted from their fleet. No vehicle owned by a commercial driver training school or testing only school may be used for testing until it passes an inspection by the division;

(d) using division approved content, forms, and scoring procedures;

(e) only for students who have completed a course of driver education or who have had a previous driver license;

(f) with only the student and the tester occupying the vehicle. The tester shall be seated next to the student. No other passengers or observers shall occupy the vehicle during the test, except upon approval and written consent by the division; and

(g) only for students who have in their possession a temporary driving permit, a learner permit, an instruction permit issued by the division; or a valid driver license issued by a jurisdiction other than the State of Utah.

(h) only for students who have in their possession adequate verification of their identity.

(3) a tester may not make any changes to a testing route without prior written approval by the division.

(4) a tester shall not employ an employee of the division as a tester.

#### **R708-37-7. Test Requirements.**

(1) A tester may not administer a skills test to a student who:

(a) completed the driver training course at the same commercial driver training school or testing only school in which the tester is employed as an instructor; or

(b) completed the driver training course at a commercial driver training school that is owned completely or partially by an individual or individuals who possess any ownership in the school in which the tester is employed as an instructor.

(2) A student who fails the skills test given by a tester may:

- (a) apply to the same tester for additional testing;
  - (b) apply to a different tester for additional testing; or
  - (c) complete the skills test at a division office.
- (3) The written test shall be administered by the division.

#### **R708-37-8. Notification of Accident.**

If any vehicle is involved in an accident during the driving skills test the tester shall notify the division of the accident in a written report on a form supplied by the division within five working days of the date of the accident. If damages are \$1,000 or more, the accident must also be reported to the local law enforcement agency. A copy of the officer's report shall also be submitted to the division when available.

#### **R708-37-9. Evidence of Test Completion.**

(1) The tester shall furnish a certificate of test completion to the student in a sealed envelope with the tester's signature signed over the seal. The certificate shall be a form approved by the division and shall contain the results of tests taken, the signature and certification number of the tester who administered the tests, and the dates the tests were completed. The test results are valid for a period of one year from the test completion date.

(2) The tester shall provide the student with a receipt each time money is paid by the student to the tester. The tester shall maintain a copy of all receipts.

(3) A student, under this rule, must submit a certificate of completion of a driver education course and a certificate of successful test completion, issued by a tester, to the division and make an application in order to obtain a Class D Driver License.

(4) The commercial driver training school or testing only school shall maintain records of all tests administered for a period of three years. Records shall be maintained in separate files for each tester for auditing purposes. The records shall be subject to inspection by the division during business hours.

#### **R708-37-10. Monthly Reports.**

(1) Each third-party tester shall submit to the division a monthly report containing the number of tests administered each month.

(2) Monthly reports shall be submitted on forms supplied by the division and must be received by the division no later

than the 10<sup>th</sup> day of each month following the month in which the testing occurred.

(3) Failure to submit monthly reports within the prescribed time is grounds for suspension or cancellation of the third-party tester's certification.

(4) Monthly reports may be submitted electronically with division approval.

#### **R708-37-11. Refusal to Certify, Grounds for Cancellation, Suspension, or Probation of a Tester's Certification.**

(1) The division may refuse to certify tester applicants who do not meet the standards for training or who submit an application that contains false or incomplete information.

(2) The tester certification shall remain effective as long as the tester retains the status of instructor for a commercial driver training school or testing only school or until the tester certification is canceled or suspended by the division. A commercial driver training school or testing only school may initiate suspension or cancellation of the testing certification held by one of their instructors by providing the division with acceptable written justification.

(3) The tester certification shall be canceled or suspended upon cancellation, revocation, denial of issuance of renewal of the tester's instructor certification. Grounds for cancellation or suspension of the tester certification shall include all items listed in R708-2-25.

(4) Certification may be canceled or suspended for non-compliance with these rules.

(5) Certification may be canceled or suspended for failure to participate in any in-service training required by the division.

(6) Certification may be canceled or suspended when a third-party tester's personal driver license has been denied, suspended, revoked, canceled, or disqualified. The tester shall be required to notify the division in writing within five working days of any action taken against the tester's driving privilege.

(7) When the division determines it is necessary to cancel, suspend, or place on probation a tester's certification, it shall determine an appropriate course of action from the following options:

(a) probation, with terms that must be met and adhered to by the tester;

(b) suspension, pending a remedial plan leading to reinstatement; or

(c) cancellation.

(8) Action by the division to cancel, suspend, place on probation or refuse to issue a tester certification is designated as an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.

(9) The following procedures will govern informal adjudicative proceedings:

(a) action by the division to cancel, revoke, place on probation or refuse to issue a certification will be commenced by the division by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63G-4-201;

(b) no response is required to the notice of agency action;

(c) an opportunity for a hearing will be granted on a cancellation, revocation, probation or refusal to issue a certification if, within five days, the division receives a request for a hearing;

(d) the tester will receive written notice of the hearing at least ten days prior to the date of the hearing;

(e) no discovery, either compulsory or voluntary, will be permitted prior to the hearing except that all parties shall have access to information contained in the division's files, and to investigatory information and materials not restricted by law;

(f) the hearing shall be conducted by an individual, or panel designated by the division; and

(g) within twenty days after the close of the hearing or

after the failure of a party to appear for the hearing, the individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right to judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(10) Reinstatement following cancellation of certification shall consist of completing an approved training plan and making application for a new certification. Instructors and testers must have a driving record free of suspensions or revocations of their driving privilege resulting from moving violations, chargeable accidents, and drug or alcohol related offenses, in all states, for a two year period immediately prior to application and during employment.

(11) Certification shall be canceled when testers are no longer employed as instructors in commercial driver training schools or testing only schools. Testers who discontinue employment as instructors with a commercial driver training schools or testing only school and subsequently return to instruct and test under the sponsorship of a different commercial driver training schools or testing only school must make a new application with the division for a new instructor certification and tester certification. If the period of cancellation of testing certification exceeds six months the applicant shall complete a course of approved training.

**R708-37-12. Advertising.**

(1) No advertisement shall indicate in any way that a commercial driver training schools or testing only school or a tester can issue or guarantee the issuance of a driver license, or imply that the testing program, except for reporting test scores, can in any way influence the division in the issuance of a Class D driver license; or imply that preferential or advantageous treatment can be obtained from the division through participation in their testing program.

(2) No tester, employee, or agent of a commercial driver training schools or testing only school shall be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

**KEY: driver training, skills tests**

**August 18, 2003**

**53-3-510**

**Notice of Continuation March 30, 2010**

**R708. Public Safety, Driver License.****R708-40. Driving Simulators.****R708-40-1. Purpose.**

The purpose of this rule is to define standards for driving simulators for use in conjunction with driver training.

**R708-40-2. Authority.**

This rule is authorized by Subsection 53-03-505(1)(d).

**R708-40-3. Definitions.**

In addition to terms defined in 53-3-102,

(1) "Operator interaction" means a condition whereby a student driver operates simulation equipment that reacts and adjusts to the student's eye, hand, foot and operation.

(2) "Field of view" means the ability to see to the right, left as well as the center of a persons visual perspective, such as a "panoramic visual field".

**R708-40-4. Standards for Driving Simulators.**

(1) A fully interactive driving simulation device shall:

(a) provide for operator interaction by use of equipment that is substantially the same in overall physical size, function and construction characteristics as the controls and seating mechanisms found in an actual passenger motor vehicle;

(b) visually display the resulting vehicle positioning and effect of individualized operator interaction relative to the simulated visual and aural scenario in a manner that is substantially similar to typical conditions found in an actual passenger motor vehicle;

(c) be capable of maintaining a visual scene that changes in response to operator or instructor movements, and approximates a field of view that a student would experience if seated in the driver seat of an actual passenger motor vehicle;

(d) present a field of view that enables the operator to observe a driving condition of that operator's driving into an intersection and visually scanning both directions of traffic with proper head movements;

(e) present other vehicles in a simulated visual scenarios that can be readily perceived as behaving in a manner consistent with real-world driving experience;

(f) enable a student to physically respond to simulated visual scenarios in the areas of vehicle control, awareness, and general-rules-of-the-road which are listed in the Utah Driver Handbook. These include: signaling, proper use of lanes, turning, lane changes, overtaking and passing, right of way, response to emergency vehicles, allowances for pedestrians, stopping, parking, navigating a vehicle through highway work zones, traffic signs, signals and road markings, and pavement markings;

(g) provide an active physically felt, steering-wheel resistance as feedback to the student, that is similar to conditions typically experienced while operating an actual passenger motor vehicle;

(h) provide an instructor with information drawn from monitoring, assessment, feedback and storage of training performance data; and which

(i) imitate and model Utah driving conditions and environment.

(2) A non-fully interactive driving simulation device shall conform to the above description of a full interactive driving simulation device, except that it does not present a student with a panoramic "side and front" field of view, is used by two or more students, or does not provide an individual student's performance information as feedback to the student.

(3) A driving simulator that does not conform to the characteristics as outlined in Section R708-40-4(1) above, is not acceptable as a fully interactive driving simulator in a driver education program as in accordance with Section 53-3-505.5(2)(b).

(4) A driving simulator that does not conform to the characteristics as outlined in Section R708-40-4(2) above, is not acceptable as a non-fully interactive driving simulator in a driver education program as in accordance with Section 53-3-505.5(2)(c).

**KEY: driving simulators**

**April 18, 2005**

**Notice of Continuation March 30, 2010**

**53-3-505**

**R708. Public Safety, Driver License.****R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.****R708-41-1. Authority.**

This rule is authorized by Section 53-3-104.

**R708-41-2. Purpose.**

The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

**R708-41-3. Definitions.**

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by

the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

(i) Church records;

(ii) Court records;

(iii) Driver License;

(iv) Employee ID;

(v) Insurance ID card;

(vi) Matricular Consular Card (issued in Utah);

(vii) Mexican Voter Registration card;

(viii) School records;

(ix) Utah DPC;

(x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

(i) United States citizen;

(ii) National of the United States of America; or

(iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) Pending or approved application for asylum in the United States;

(iii) Admission into the United States as a refugee;



(iv) Pending or approved application for temporary protected status in the United States;

(v) Approved deferred action status; or

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status; or

(F) Pending application for adjustment of status to legal permanent resident or conditional resident.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every

application process and includes:

(a) Social Security card issued by the U.S. government that has been signed or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number as a result of their legal/lawful presence status.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

(a) Bank statement (dated within 60 days);

(b) Court documents;

(c) Current mortgage or rental contract;

(d) Major credit card bill (dated within 60 days);

(e) Property tax notice (statement or receipt dated within one year);

(f) School transcript (dated within 90 days);

(g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;

(h) Valid Utah vehicle registration or title;

(i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

**R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification Card, or Limited-Term Identification Card.**

(1) An individual who is applying for a Learner Permit must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or

(b) One legal/lawful presence document as outlined in

definition (9)(b) and one identity document as outlined in definition (6)(b); or

(c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and

(d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and

(e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with

(5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original limited-term CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate, or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as

outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

**R708-41-5. Exceptions.**

This rule does not apply when issuing driver license certificates or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

**R708-41-6. Document Storage.**

All documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful/legal presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a U.S. birth certificate may be written on the license or identification card application rather than scanning the document.

**KEY: acceptable documents, identification card, license certificate, limited-term license certificate**

**March 24, 2010**

**53-3-104**

**Notice of Continuation March 25, 2010**

**53-3-205**

**53-3-214**

**53-3-410**

**53-3-804**

**R710. Public Safety, Fire Marshal.****R710-6. Liquefied Petroleum Gas Rules.****R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2008 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

**1.6 Title.**

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

**1.7 Validity.**

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

**1.8 Conflicts.**

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

**R710-6-2. Definitions.**

2.1 "ASME Stamp" means the symbol used to designate that the container has been built to the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, Section VIII, Divisions 1 or 2, Rules for the Construction of Unfired Pressure Vessels.

2.2 "Board" means the Liquefied Petroleum Gas Board.

2.3 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.4 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.5 "Division" means the Division of the State Fire Marshal.

2.6 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.10 "LPG" means Liquefied Petroleum Gas.

2.11 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which

authorization is required.

2.12 "NFPA" means the National Fire Protection Association.

2.13 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.14 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.15 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.16 "UCA" means Utah State Code Annotated 1953 as amended.

**R710-6-3. Licensing.****3.1 Type of license.**

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 The application for a license to engage in the business of LPG as required in 3.1 of these rules, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

**3.3 Signature on Application.**

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

**3.4 Issuance.**

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

**3.5 Original, Valid Date.**

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

**3.6 Renewal.**

Application for renewal shall be made on forms provided by the SFM.

**3.7 Refusal to Renew.**

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

**3.8 Change of Address.**

Every licensee shall notify the Division, in writing, within

thirty (30) days of any change of his address.

#### 3.9 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

#### 3.10 List of Licensed Concerns.

3.10.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.10.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

#### 3.11 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

#### 3.12 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

#### 3.13 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

#### 3.14 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

#### 3.15 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

#### 3.16 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of \$5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

#### 3.17 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

### **R710-6-4. LP Gas Certificates.**

#### 4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

#### 4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

#### 4.3 Types of Initial Examinations:

##### 4.3.1 Carburetion

##### 4.3.2 Dispenser

##### 4.3.3 HVAC/Plumber

##### 4.3.4 Recreational Vehicle Service

##### 4.3.5 Serviceman

##### 4.3.6 Transportation and Delivery

#### 4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The applicant is allowed to use the adopted statute, administrative rules, NFPA 54, and NFPA 58. Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

4.4.2 The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

4.4.3 Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.4.4 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.5 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.4.6 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.7 As required in Sections 4.2 and 4.3 of these rules, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.8 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.9 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.10 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that are licensed journeyman plumbers as required in the Construction Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

#### 4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

#### 4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

#### 4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.7.6 As required in Section 4.7 of these rules, those applicants that provide the Division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

#### 4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Section 5.2 of these rules.

#### 4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

#### 4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

#### 4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

#### 4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

#### 4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

#### 4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

#### 4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for

any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

#### 4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

#### 4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

#### 4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

#### 4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

### **R710-6-5. Adjudicative Proceedings.**

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.5 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct

the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee, certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

#### **R710-6-6. Fees.**

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - \$450.00

6.1.1.1.2 Class II - \$450.00

6.1.1.1.3 Class III - \$105.00

6.1.1.1.4 Class IV - \$150.00

6.1.1.2 Branch office license - \$338.00

6.1.1.3 LPG Certificate - \$40.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - \$20.00

6.1.1.5 Duplicate - \$30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - \$30.00

6.1.2.2 Re-examination - \$30.00

6.1.2.3 Five year examination - \$30.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - \$150.00

6.1.3.2 5,000 water gallons or less of LPG - \$75.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - \$50.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more) - \$250.00

6.1.6 Private Container Inspection (More than one container) - \$150.00

6.1.7 Private Container Inspection (One container) - \$75.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

#### **R710-6-7. Board Procedures.**

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

#### **R710-6-8. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be marked with the ASME stamp as defined in Section 2.1 of these rules. All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional

nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following sentence at the end of the section: Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.9.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (L) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

#### **R710-6-9. Penalties.**

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

9.1.1 Concern failure to license - \$210.00 to \$900.00

9.1.2 Person failure to obtain LPG Certificate - \$30.00 to \$90.00



9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - \$210.00 to \$900.00

9.1.4 Concern doing business under improper class - \$140.00 to \$600.00

9.1.5 Failure to notify SFM of change of address - \$60.00

9.1.6 Violation of the adopted Statute or Rules - \$210.00 to \$900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at \$30.00 per hour.

9.2.6 Triple the fee.

**KEY: liquefied petroleum gas**

**March 24, 2010**

**53-7-305**

**Notice of Continuation March 30, 2006**

**R710. Public Safety, Fire Marshal.****R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.****R710-10-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to Fire Service Training, Education, and Certification, and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for fire service training, education and certification by establishing a Fire Service Education Administrator, a Fire Education Program Coordinator, the Fire Service Standards and Training Council, the Fire Service Certification Council, the Utah Fire and Rescue Academy, and standards for those agencies conducting non-affiliated fire service training.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 National Fire Protection Association (NFPA), NFPA 1403, Standard on Live Fire Training Evolutions, 2002 edition.

**R710-10-2. Definitions.**

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "Career Firefighter" means one whose primary employment is directly related to the fire service.

2.6 "Certification Council" means the Fire Service Certification Council.

2.7 "Certification System" means the Utah Fire Service Certification System.

2.8 "Coordinator" means Fire Service Education Program Coordinator.

2.9 "EMT" means Emergency Medical Technician.

2.10 "Non-Affiliated" means an individual who is not a member of an organized fire department.

2.11 "Plan" means Fire Academy Strategic Plan.

2.12 "RCA" means Recruit Candidate Academy.

2.13 "SFM" means State Fire Marshal or authorized deputy.

2.14 "Standards Council" means Fire Service Standards and Training Council.

2.15 "UCA" means Utah Code Annotated, 1953.

2.16 "Volunteer/Part-Paid Firefighter" means one whose primary employment is not directly related to the fire service.

**R710-10-3. Fire Service Education Administrator.**

3.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

3.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

3.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

3.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

3.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

3.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

3.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

3.6.1 Insure that a broad based selection committee is impaneled each year.

3.6.2 Compile for presentation to the Board the proposed grants.

3.6.3 Receive the Board's approval before issuing the grants.

3.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

3.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

**R710-10-4. Fire Service Education Program Coordinator.**

4.1 The Fire Service Education Program Coordinator shall assist the Administrator in statewide fire service education.

4.2 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

4.3 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

4.4 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

4.5 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

4.6 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council's decisions.

**R710-10-5. Fire Service Standards and Training Council.**

5.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

5.2 The Standards Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:

5.2.1 Representative from the Utah State Fire Chiefs Association.

5.2.2 Representative from the Utah State Firemen's Association.

5.2.3 Representative from the Fire Marshal's Association of Utah.

5.2.4 Specialist in hazardous materials representing the

Hazardous Materials Institute.

5.2.5 Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

5.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

5.2.7 Representative from the International Association of Firefighters.

5.2.8 Representative from the Utah Fire Service Certification Council.

5.2.9 Representative from the fire service that is an Advanced Life Support (ALS) provider to represent Emergency Medical Services.

5.2.10 Representative from the Utah Fire Training Officers Association.

5.3 The Standards Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. A majority of the Standards Council members shall be present to constitute a quorum.

5.4 The Standards Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

5.5 If a Standards Council member has two or more unexcused absences during a 12 month period, from regularly scheduled Standards Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Standards Council member to the Board for status review.

5.6 A member of the Standards Council may have a representative of their respective organization sit in proxy of that member, if submitted and approved by the Coordinator prior to the meeting.

5.7 The Chair or Vice Chair of the Standards Council shall report to the Board the activities of the Standards Council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the Standards Council in the absence of the Chair or Vice Chair.

5.8 The Standards Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

5.9 One-half of the members of the Standards Council shall be reappointed or replaced by the Board every two years.

#### **R710-10-6. Utah Fire Service Certification Council.**

6.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

6.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

6.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

6.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

6.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

6.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

#### **R710-10-7. Utah Fire and Rescue Academy.**

7.1 The primary fire service training school shall be known as the Utah Fire and Rescue Academy.

7.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

7.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

7.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

7.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those career, volunteer/part-paid, and non-affiliated students attending the Academy in the following categories:

7.5.1 Those who have received certification during the previous contract period at each certification level.

7.5.2 Those who have received an academic degree in any Fire Science category in the previous contract period.

7.5.3 Those who have completed other Academy classes during the previous contract period.

7.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 7.5, comparing attendance in the previous contract period.

7.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, the following:

7.7.1 A cost analysis of classes to include the total spent for each class title, the average cost per class, the number of classes delivered, the number of participants per class title, and the cost per participant for each class title provided by the Academy.

7.7.2 A budget summary comparing amounts budgeted to actual expenditures for each budget code funded by the contract.

7.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

7.8.1 Non-affiliated personnel enrolled in college courses.

7.8.2 Career fire service personnel enrolled in college credit courses.

7.8.3 Volunteer and part-paid fire service personnel enrolled in college credit courses.

7.8.4 Non-affiliated personnel enrolled in non-credit continuing education courses.

7.8.5 Career fire service personnel enrolled in non-credit continuing education courses.

7.8.6 Volunteer and part-paid fire service personnel enrolled in non-credit continuing education courses.

7.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

#### **R710-10-8. Non-Affiliated Fire Service Training.**

8.1 Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive accreditation in writing from the Standards Council and the Academy Director.

8.2 Before accreditation is granted, the training

organization requesting approval shall demonstrate the following:

8.2.1 Complete a written application requesting approval to conduct the training course.

8.2.2 Designate an approved course coordinator to oversee the course delivery and insure the course meets each of the applicable objectives.

8.2.3 Insure that qualified instructors are used to teach each subject.

8.2.4 Insure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

8.2.5 Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

8.2.6 Maintain course documentation as required through the Certification System to insure that all elements of the necessary training is completed.

8.2.7 Follow the accepted requirements of the Certification System for requesting testing and certification.

8.3 As required in Section 8.2.2 of these rules, the designated course coordinator shall meet the following requirements:

8.3.1 Be currently certified at the certification level as established by the Standards Council.

8.3.2 Insure that all assigned instructors meet the requirements as required in Section 8.4 of these rules.

8.3.3 Insure that the course syllabus and practical skills guide meet the requirements of the Certification System.

8.3.4 Insure that the requirements of Sections 8.2.4, 8.2.5, 8.2.6, and 8.2.7 of these rules are met.

8.4 As required in Section 8.2.3 of these rules, qualified instructors shall meet the following requirements:

8.4.1 Must be currently certified at the certification level as established by the Standards Council.

8.4.2 If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

8.5 An Introduction to Emergency Services class shall be completed by the non-affiliated student wishing to receive an RCA within the time period stated in 8.7 of these rules. The Introduction to Emergency Services class may be waived if the applicant can demonstrate to the Academy sufficient competency or prior experience in the fire service to make the class unwarranted.

8.6 Non-affiliated training providers shall follow the curriculum outline that is taught at the Academy in the Recruit Candidate Academy (RCA) program in order to award students an RCA Certificate of Completion. Any changes to the curriculum of the RCA program at the Academy shall be provided by the Academy to the non-affiliated training providers to maintain consistency in the RCA program.

8.7 An RCA Certificate of Completion may be issued to the non-affiliated student by the Academy upon successful completion of the following within a 24 month period:

8.7.1 Introduction to Emergency Services class or accepted waiver.

8.7.2 EMT Basic Course.

8.7.3 Completion of an accredited RCA.

8.8 Non-affiliated training providers that have received accreditation shall be reaccredited every five years from the date of initial accreditation.

#### **R710-10-9. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

#### **R710-10-10. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

#### **R710-10-11. Adjudicative Proceedings.**

11.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

11.2 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

11.3 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

11.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

11.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

11.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

11.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire training**

**March 24, 2010**

**53-7-204**

**R850. School and Institutional Trust Lands, Administration.****R850-21. Oil, Gas and Hydrocarbon Resources.****R850-21-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and management of trust-owned lands and oil, gas and hydrocarbon resources.

**R850-21-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated pursuant to R649.

**R850-21-175. Definitions.**

The following words and terms, when used in Section R850-21 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.
2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.
3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.
4. Assignment(s): a conveyance of all or a portion of the lessee's record title, non-working interest, or working interest in a lease.
  - (a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.
  - (b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.
  - (c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.
  - (d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign/or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.
  - (e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.
5. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.
6. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the delay rentals and royalties set forth in a lease in an application as consideration for the issuance of such lease.
7. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for pooling or unitization which form a logical unit for exploration, development or drilling operations.
8. Delay Rental: a sum of money as prescribed in the lease payable to the agency for the privilege of deferring the commencement of drilling operations or the commencement of production during the term of the lease.

9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.

10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.

11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.

12. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

13. Lease: an oil, gas and hydrocarbon lease covering the commodities defined in R850-21-200(1) issued by the agency.

14. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

15. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive oil and gas lease application process which would constitute one lease when issued.

16. Lessee: a person or entity holding a record title interest in a lease.

17. NGL: natural gas liquids.

18. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

19. Paying Quantities: the gross income from the leased substances produced and sold (after deduction for taxes and lessor's royalty) that exceeds the cost of operation.

20. Qualified Interest Owner: a person or legal entity who meets the requirements of R850-3-200 of these rules.

21. Rental: the amount due and payable on the anniversary of the effective date of a lease to maintain the lease in full force and effect for the following lease year.

22. Shut-in Gas Well: a gas well which is physically capable of producing gas in paying quantities, but, for which the producible gas cannot be marketed at a reasonable price due to existing marketing or transportation conditions.

23. Shut-In or Minimum Royalty: the amount of money accruing and payable to the agency in lieu of rental or delay rental beginning from the first anniversary date of the lease on or after the initial discovery of oil or gas in paying quantities on the leasehold or the allocation of production to the leasehold. Minimum royalty accrues beginning from the anniversary date of a lease but is not payable until the end of the year. Actual royalty accruing from a lease or allocated to a unitized or communitized lease during the lease year is credited against the minimum royalty obligation for the lease year. If the royalty from production does not equal or exceed the required minimum royalty for the lease year, the lessee is obligated to pay the difference.

24. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

25. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources

acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

26. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

27. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

**R850-21-200. Classification of Oil, Gas and Hydrocarbons.**

Oil, Gas, and Hydrocarbon leases shall cover oil, natural gas, including gas producible from coal formations or associated with coal bearing formations, and other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form) and also including sulfur, helium and other gases not individually described. The oil, gas, and hydrocarbon category shall not include coal, oil shale, tar sands or gilsonite.

**R850-21-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of oil, gas and hydrocarbon resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than \$1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter

Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date of the opening of bids for which no bid was received for said lands under the competitive bid offering.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than \$1 per acre, or fractional acre thereof, which will constitute the delay rental for the first year of the lease.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to the applicant minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

**R850-21-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust-owned land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

**R850-21-500. Lease Provisions.**

The following provisions, terms and conditions shall apply

to all leases granted by the agency:

1. Delay Rentals and Rental Credits.

(a) The delay rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual delay rental on any lease, regardless of the amount of acreage, shall in no case be less than \$40.

(c) Delay rental payments shall be paid each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of delay rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: the production royalty rate shall not be less than 12.5% of gross proceeds minus costs of transportation off lease, at the time the lease is offered.

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of the Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands pooled, communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands pooled, communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

(b) Diligent operations may include cessation of operations not to exceed 90 days in duration or a cumulative period of 180 days in one calendar year.

5. Pooling, Communitization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of oil and gas development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination

from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. Shut-in Gas Wells Producing Gas in Paying Quantities: to qualify as a shut-in gas well capable of producing gas in paying quantities:

(a) a minimum royalty shall be paid in an amount not less than the current annual minimum royalty provided for in the lease;

(b) the terms of the lease shall provide the basis upon which the minimum royalty is to be paid by the lessee for a shut-in gas well; and

(c) the director may, at any time, require written justification from the lessee that a well qualifies as a shut-in gas well. A shut-in gas well will not extend a lease more than five years beyond the original primary term of the lease.

7. Oil/Condensate/Gas/NGL Reporting and Records Retention.

(a) Notwithstanding the terms of the lease agreements, gas and NGL report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGL's does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production as currently provided in the lease form.

(c) A lessee, operator, or other person directly involved in developing, producing or disposing of oil or gas under a lease through the point of first sale or point of royalty computation, whichever is later, shall establish and maintain records of such activities and make any reports requested by the director to implement or require compliance with these rules. Upon request by the director or the director's designee, appropriate reports, records or other information shall be made available for inspection and duplication.

(d) Records of production, transportation and sales shall be maintained for six (6) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun, involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

8. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

9. Other lease provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.

**R850-21-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

- (B) the land involved;
- (C) the name and address of the assignee;
- (D) the name of the assignor;
- (E) the interest transferred;
- (iii) be accompanied by a certification that the assignee is a qualified interest owner; and
- (iv) include a certification of net revenue interest.
- (b) Lessees who are assigning a lease shall:
  - (i) prepare and execute the assignments in duplicate, complete with acknowledgments;
  - (ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and
  - (iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.
- (c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.
- (d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.
- (e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.
- (f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.
- (g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.
- (h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.
  - (i) Mass assignments are allowed, provided:
    - (i) the requirements set forth in paragraph R850-21-600(2) are met;
    - (ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;
    - (iii) the prescribed fee is paid for each lease affected; and
    - (iv) a separate mass assignment is filed for each type of

interest (record title, working or non-working interest) that is assigned.

(j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.

(k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

### 3. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:

(i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) the required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

### R850-21-700. Operations Plan and Reclamation.

1. The lessee or designated operator shall submit to, and must receive the approval of, the agency for a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of lands contained in a lease. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee or designated operator shall commence actual drilling operations on any well or prior to commencing any surface disturbance associated with the activity on lands contained within a lease, the operator or lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of the application for a permit to drill (APD) with UDOGM. The agency will review any request for drilling operations and will grant



approval providing that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the APD for oil, gas or hydrocarbon resources administered by the agency is required prior to approval by UDOGM. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of the APD, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased lands where the surface of said lands are necessary for the development of the lease; and

(d) keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the agency. A copy of the log, as well as any data related to exploration drill holes shall be deposited with the agency at the agency's request.

3. Oil and gas drilling, or other operations which disturb the surface of lands contained within or on the leased lands shall require surface rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the rules and regulations administered by the UDOGM.

In all cases, the lessee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency prior to commencement of operations. This sloping shall be a concurrent part of the operation of the leased premises to the extent that the operation shall not at any time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the premises shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

The agency shall require that all topsoil in the affected area be removed, stockpiled, and stabilized on the leased premises until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency. All mud pits shall be filled and materials and debris removed from the site.

4. All lessees or designated operators under oil, gas and hydrocarbon leases shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

#### **R850-21-800. Bonding.**

##### **1. Bond Obligations.**

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

##### **(i) Surety Bonds.**

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

##### **(ii) Personal Bonds.**

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit: Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

##### **2. Bond Amounts.**

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of \$15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well

exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than \$5,000 unless waived in writing by the director.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

**R850-21-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that

the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

**KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations**

**March 20, 2006**

**53C-1-302(1)(a)(ii)**

**Notice of Continuation April 1, 2010**

**53C-2 et seq.**

**R850. School and Institutional Trust Lands, Administration.****R850-22. Bituminous-Asphaltic Sands and Oil Shale Resources.****R850-22-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the management of bituminous-asphaltic sands and oil shale resources and for the issuance of leases for such resources on trust lands.

**R850-22-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Bituminous-asphaltic sands and oil shale development activities are regulated pursuant to R649.

**R850-22-175. Definitions.**

The following words and terms, when used in Section R850-22 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.
2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.
3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.
4. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.
5. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the rentals and royalties set forth in a lease application as consideration for the issuance of such lease.
6. Assignment(s): a conveyance of all or a portion of the lessee's record title interest or royalty interest.
  - (a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.
  - (b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.
  - (c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.
  - (d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.
  - (e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.
7. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.
8. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for unitization which forms a logical unit for exploration, development or drilling operations.
9. Designated Operator: the person or entity that has been

granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.

10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.

11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.

12. Lease: a bituminous-asphaltic sands or oil shale lease covering the commodities defined in R850-22-200 issued by the agency.

13. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

14. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive lease application process which would constitute one lease when issued.

15. Lessee: a person or entity holding a record title interest in a lease.

16. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

17. Over-the-Counter Lease: the issuance of a lease through application on a first come, first served basis.

18. Production in Paying Quantities (also referred to in older mineral leases as Production in Commercial Quantities): production of the leased substance in quantities sufficient to yield revenue in excess of operating costs.

19. Rental: the amount due and payable on or before the anniversary date of a lease to maintain the lease in full force and effect for the following lease year.

20. Record Title: the legal ownership of a mineral lease as established in the records of the agency.

21. Sub-lease: a transfer of a non-record title interest in a mineral lease.

22. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

23. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

24. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

25. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

**R850-22-200. Classification of Bituminous-Asphaltic Sands and Oil Shale.**

1. The term "bituminous-asphaltic sands" means rock or sand impregnated with asphalt or heavy oil and is synonymous with the term "tar sands." This category does not cover any substances, either combustible or non-combustible, which are produced in a gaseous or rarefied state at ordinary temperature and pressure conditions other than gas which results from artificial introduction of heat. Nor does this category embrace any liquid hydrocarbon substance which occurs naturally in a

liquid form in the earth regardless of depth, including drip gasoline or other natural condensate recovered from gas. The bituminous-asphaltic sands category does not include coal, oil shale, or gilsonite.

2. The oil shale category shall include any sedimentary rock containing kerogen.

#### **R850-22-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of bituminous-asphaltic sands and oil shale resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than \$1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than \$1 per acre, or fractional acre thereof.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the

office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time.

If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to applicant, minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

#### **R850-22-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

#### **R850-22-500. Bituminous-Asphaltic Sands and Oil Shale Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Rentals and Rental Credits.

(a) The rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than \$500.

(c) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: during the primary term of the lease, the lessee shall pay lessor a production royalty on the basis of eight percent (8%) of the gross value, including all bonuses and allowances received by lessee, of each marketable product produced from the leased substance and sold under a bonafide contract of sale. The royalty may, at the discretion of the lessor, be increased after the ten (10) year primary term at a rate not in excess of one percent (1%) per annum to a maximum of twelve and one-half percent (12.5%).

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of a Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

5. Communization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

7. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not

substantially impair the lessees' rights under the lease.

#### **R850-22-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(iii) be accompanied by a certification that the assignee is a qualified interest owner; and

(iv) include a certification of net revenue interest.

(b) Lessees who are assigning a lease shall:

(i) prepare and execute the assignments in duplicate, complete with acknowledgments;

(ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and

(iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.

(c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.

(d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.

(e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.

(f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the

assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.

(i) Mass assignments are allowed, provided:

(i) the requirements set forth in paragraph R850-22-600(2) are met;

(ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;

(iii) the prescribed fee is paid for each lease affected; and

(iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.

(j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.

(k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

### 3. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:

(i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) the required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

### R850-22-700. Operations Plan and Reclamation.

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land

will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

### **R850-22-800. Bonding.**

#### 1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM, a bond in a form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

#### (i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah.

#### (ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally

insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

#### 2. Bond Amounts.

The bond amount required for an exploration or development project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a project bond covering an individual, single-exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations.

#### 3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by UDOGM or the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed with UDOGM or the agency, or until all terms and conditions of the lease and all reclamation obligations of UDOGM have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

### **R850-22-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust

lands. Written notice shall be given to all lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

**KEY: bituminous-asphaltic sands, oil shale, administrative procedures, lease provisions**

March 20, 2006

Notice of Continuation April 1, 2010

53C-1-302(1)(a)(ii)

53C-2 et seq.



**R850. School and Institutional Trust Lands, Administration.****R850-23. Sand, Gravel and Cinders Permits.****R850-23-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe agency objectives, standards and conditions for the issuance of sand, gravel and cinders permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on trust lands.

**R850-23-125. Mineral Estate Distinctions.**

Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a materials permit approved by the director and in accordance with these rules.

**R850-23-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), the agency shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. to the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC) if the proposed action may have a significant impact upon natural or cultural resources of the state;
2. evaluation of and response to comments received through the RDCC process; and
3. evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-23-500(2).

**R850-23-175. Definitions.**

1. Permit: a sand, gravel or cinders permit.
2. Permittee: a person or entity holding a record title interest in a sand, gravel or cinders permit.

**R850-23-200. Sand, Gravel and Cinders Permits Issued on Agency Lands.**

1. The agency may issue permits or may convey profits a prendre or similar interests on all trust lands, and, when the agency deems it consistent with agency land use plans and trust responsibilities.
2. The agency may issue permits when the sale of the permitted materials would be exempt from sales tax under Subsection 59-12-104(2) or 59-12-104(28).
3. The agency may issue profits a prendre in all other instances according to the procedures and provisions of this chapter.

**R850-23-300. Rentals and Royalties.**

1. Rentals.
  - (a) Rental rates shall be \$10 per acre, or fractional part thereof, per annum.
  - (b) The minimum annual rental on permits shall be determined periodically by the agency pursuant to board policy.
2. Royalty Rates and Provisions.
  - (a) The agency shall charge full market value for all permitted materials purchased under a sand, gravel or cinders permit. Market value will be determined by the agency through analysis of the local market.
  - (b) The agency, pursuant to board policy, may annually establish minimum royalty rates for permits based on the type of permitted material being removed.

(c) Royalty payments shall be remitted to the agency on a quarterly basis or on such other basis as may be required by the terms and conditions of the permit and shall be accompanied by an agency approved "Production and Settlement Transmittal Form."

**R850-23-400. Terms of Sand, Gravel and Cinders Permits.**

Permits issued under these rules shall be issued for a term which allows for the most beneficial use of the resource, as specified in the terms and conditions of the permit, but no longer than necessary to accomplish the extraction and removal of the materials subject to the sale, and to accomplish any required reclamation work. In no event shall a permit continue for a period of longer than five years without readjustment in its terms and conditions, by the director, as may be determined to be in the best interest of the trust beneficiaries.

**R850-23-500. Application Procedures.**

1. Application Filing.
  - (a) Applications for permits may be submitted to any office of the agency during office hours pursuant to R850-3.
  - (b) The director may approve applications for permits for common varieties of sand, gravel or cinders in accordance with the bid solicitation process described in R850-23-500(2), subject to rule R850-23-1400, Over-the-Counter Sales.
2. Bid Solicitation Processes.
  - (a) In the absence of any valid permit, or any valid lease for the same commodity upon the same land, the agency may offer for competitive bid permits when exposing the site to the market could reasonably be expected to produce permitted materials sales. A notice of lands available for competitive filing for permits shall be made in a manner to reasonably solicit competitive bid applications. Notices of competitive filing shall contain the procedure by which the agency shall award the permit.
  - (b) Upon acceptance of any permit application for common varieties of sand, gravel, or cinders the agency shall solicit competing applications through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit is offered. At least 30 days prior to bid opening, certified notification will be sent to permittees of record, adjacent permittees/lessees, and adjacent landowners. Notices will also be posted in the local governmental administrative building or the county courthouse. Notification and advertising shall include the legal description of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.
  - (c) The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200, for special use leases, sales, or exchanges, respectively.
  - (d) If no competing applications involving sale, lease or exchanges are received by the deadline published pursuant to R850-23-500(2)(b), then the agency shall award the permit based on the following criteria:
    - i) amount of bonus bid;
    - ii) amount and rate of proposed materials extraction; and
    - iii) other criteria and assurances of performances as the agency shall require by permit or advertise prior to bidding.

**R850-23-600. Permit Execution.**

The permit shall be executed by the applicant and returned to the agency within 30 days from the date of applicant's receipt of the permit. Failure to execute and return the documents to the agency within the 30-day period may result in cancellation

of the permit, the forfeiture of any fees, and the discharge of any obligation of the agency arising from the approval of the application.

**R850-23-700. Sand, Gravel and Cinders Permit Provisions.**

Each permit shall contain provisions necessary to ensure responsible surface management including, but not limited to, the following provisions: The rights of the permittee; rights reserved to the permitter; the term of the permit; payment obligations; transfers of permit interest by permittee; permittee's responsibility for reclamation; terms and conditions of permit forfeiture; and protection of the agency from liability from all actions of the permittee.

**R850-23-800. Bonding Provisions.**

Prior to the issuance of a permit, or for good cause shown at any time during the term of the permit, and upon 30 days written notice, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit.

1. All bonds posted on permits may be used for payment of all monies, rentals, and royalties due to the agency, also for costs of reclamation and for compliance with all other terms and conditions of the permit, and rules pertaining to the permit. The bond shall be in effect even if the permittee has conveyed all or part of the permit interest to a sub-lessee, assignee, or subsequent operator until such time as the permittee fully satisfies the permit obligations, or until the bond is replaced with a new bond posted by the sub-lessee or assignee.

2. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 30 days written notice stating the increase and the reason(s) for such increase.

3. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the agency will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and permittee, c/o permittee's address", with an approved state or federally insured banking institution registered in Utah. Such certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency; the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

**R850-23-900. Insurance Requirements.**

Prior to the issuance of a permit for sand, gravel and cinders, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

**R850-23-1000. Plans of Operation.**

1. Prior to the commencement of any activity authorized by a permit the permittee shall submit, for the director's approval, a plan of operations which shall include the following:

(a) A map or plat showing:

(i) the location and sequence of areas from which material is to be excavated;

(ii) the location of any processing or stationary equipment or improvements which will be placed on the premises;

(iii) transportation and access routes across the premises and adjacent properties;

(iv) the location of any fuel storage tanks; and

(v) the location of stockpile areas.

(b) Elevation drawings of the premises before and after the excavation of materials.

(c) Reclamation plans acceptable to the director, upon review by the School and Institutional Trust Lands Administration.

(d) Copy of any required notification of the proposed operation to the Utah Division of Oil, Gas and Mining and all other government agencies.

(e) Copy of notification of the proposed operation to the owner of the surface estate, owners of the mineral estate, and to all other parties having any valid existing lease or permit upon the same lands.

2. Within 60 days of receiving such plan of operation, the agency shall review the plan and request any additional information necessary to complete the review. The permittee shall not commence any operations which may disturb the lands until the agency has reviewed the plan of operation submitted by the permittee and has given its written approval to the permittee for the commencement of such operations.

3. Each permittee holding a current permit shall within 30 days of each annual anniversary date of the issuance of the permit, submit to the agency a report of all activities under the permit for the previous year. Such report shall include a description of new excavations and surface disturbances, the type and quantity of the materials produced and sold or stockpiled, a description of mined land reclamation work completed or in progress, and any other information requested by the agency to reasonably monitor the permittee's operations under the permit.

**R850-23-1050. Conduct of Operations and Compliance with Rules.**

All exploration, mining or other operations performed under any permit, shall be performed in a good and workman like manner to ensure the conservation of the materials deposits, all other deposits of common and uncommon varieties of mineral resources, and other natural resources upon the lands. Each permittee of a permit shall at all times take whatever measures are necessary to be in compliance with all applicable rules of any federal or state agency pursuant to the activities and operations of the permittee or operator upon the lands.

**R850-23-1100. Existing Lease and Permit Conversion.**

Existing sand and gravel leases or permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the conditions and provisions contained in the lease or permit; provided, however, the agency may allow such lessees/permittees to convert such existing leases or permits to the new permit, providing such conversion will not conflict with the valid existing rights of any other lessee or permittee or owner upon the same lands.

**R850-23-1200. Sand, Gravel and Cinders Permit Assignments.**

A permit may be assigned to any person, firm, association,



**R850. School and Institutional Trust Lands, Administration.**

**R850-24. General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits.**

**R850-24-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-402(1) of the School and Institutional Trust Lands Management Act which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases or material permits and management of trust lands and mineral and material resources.

**R850-24-125. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Mineral and material development activities are regulated pursuant to R645, R647, and R649.

**R850-24-150. Scope - Mineral Estate Distinctions.**

1. For purposes of this section, mineral and material resources include all hardrock minerals and building stone; coal; and geothermal resources. Additional rules specific to these categories are found in section R850-25 for hardrock and material resources; section R850-26 for coal; and section R850-27 for geothermal resources. These general provisions do not cover oil, gas and hydrocarbons; bituminous-asphaltic sands and oil shale; or sand, gravel and cinders.

2. Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a sand and gravel or volcanic cinder permit approved by the agency, pursuant to Section R850-23.

**R850-24-175. Definitions.**

The following words and terms, when used in sections R850-24 through R850-27 of this chapter shall have the following meanings, unless otherwise indicated:

1. Act: the School and Institutional Trust Lands Management Act, Utah Code Sections 53C-1 et seq.

2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.

3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.

4. Assignments and Transfers of Interest:

(a) Assignment: a transfer of all or a portion of the lessee's/permittee's record title interest in a mineral lease or material permit.

(b) Assignment of Overriding Interests: a transfer of an interest in a mineral lease or material permit that creates a right to share in the proceeds of production from the lease or permit, but confers no right to enter upon the leased or permitted lands or to conduct exploration, development or mining operations on the lands.

(c) Partial Assignment: an assignment of the lessee's record title interest in a part of the lands in a mineral lease or material permit and a segregation of the assigned lands into a separate lease or permit.

(d) Sublease/Operating Rights Assignment: a transfer of a non-record title interest in a mineral lease or materials permit, which authorizes the holder to enter upon the leased or permitted lands to conduct exploration, development and mining operations, but does not alter the relationship imposed by a lease on the lessor and the lessee.

(e) Transfer of Interest: any conveyance of an interest in a mineral lease or material permit by assignment, partial assignment, sublease, operating rights assignment, or other

agreement.

5. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.

6. Board of Trustees: the board created under Utah Code Section 53C-1-202.

7. Bonus Bid: a payment reflecting an amount to be paid by the applicant in addition to the rentals and royalties set forth in a lease or permit as consideration for the issuance of such lease or permit.

8. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease or permit and has been approved by the agency to conduct operations on the lease, permit or a portion thereof.

9. Director: the director as defined in Utah Code Subsection 53C-1-103(3) and Sections 53C-1-301 - 303, or a person to whom the director has delegated authority.

10. Effective Date: unless otherwise defined in the lease or permit, the effective date shall be the first date of the month following the date a lease or permit is executed. An amended, extended, segregated or readjusted lease or permit will retain the effective date of the original lease or permit.

11. Lessee: a person or entity holding a record title interest in a mineral lease under R850-25, coal lease under R850-26, or geothermal steam lease under R850-27.

12. Mining Unit: a consolidation of trust mineral lands approved by the director forming a logical exploration, development, or mining operation.

13. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency's assistant director for minerals or other designated person.

14. Over-the-Counter Permits: the issuance of a material permit through open sales on a first-come, first-served basis.

15. Permittee: a person or entity holding a record title interest in a material permit under R850-25.

16. Record Title Interest: a lessee's/permittee's interest in a lease/permit which includes the obligation to pay rent, the rights to assign or relinquish the lease/permit, and the ultimate responsibility to the agency for obligations under the lease or permit.

17. Sublease: a transfer of a non-record title interest in a mineral lease or material permit.

18. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

19. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

20. UDOGM: the Division of Oil, Gas and Mining of the Utah Department of Natural Resources.

**R850-24-200. Insurance Requirements.**

Prior to the issuance of a permit or lease for mineral and material resources, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an

insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

**R850-24-400. Preference Rights for Unleased Mineral or Material.**

1. Any lessee or permittee who discovers any mineral or material on lands leased or permitted from the agency which are not included within that lease or permit shall have a preference right to a lease or permit covering the unleased mineral or unpermitted material, provided the unleased mineral or unpermitted material at the time of discovery is not included within a lease or permit application by another party.

2. The preference right lease or permit is subject to the rental, royalty, and development requirements provided in these rules and in the lease or permit form.

3. The preference right shall not extend to any unleased mineral or unpermitted material which have been withdrawn from leasing or permitting.

4. The preference right shall continue for a period of 60 days after the discovery of the unleased mineral or unpermitted material, provided the applicant notifies the agency within ten (10) days after the discovery and makes application to lease the unleased mineral or permit the unpermitted material within the sixty (60) day period after date of discovery.

**R850-24-500. Multiple Mineral and Material Development (MMD) Area.**

The agency may designate any land under its authority as a multiple mineral development area (MMDA).

1. In designated MMDAs, the agency may require, in addition to all other terms and conditions of a mineral lease or material permit, that the lessee or permittee in an area capable of multiple mineral or material development furnish a bond beyond that required in subsection R850-24-600(1)(a) or evidence of financial responsibility as specified by the agency, to assure that the agency and other mineral lessees, material permittees, sand and gravel permittees under R850-23, or bituminous-asphaltic sands lessees under R850-22 be indemnified and held harmless from and against all unreasonable and unnecessary damage to the leased resource, mineral or material deposits or improvements caused by the conduct of the lessee/permittee on trust lands.

2. Where a lessee/permittee intends to conduct multiple mineral or material development activities, the lessee/permittee shall:

(a) submit advance written notice to the agency and to other lessees/permittees holding a lease or permit for any mineral commodity within the MMDA of any activities that are to occur within the multiple mineral or material development area.

3. All activities within the MMDA are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific written permission to conduct the activity.

4. To preserve the value of the mineral or material resources, the agency may impose additional requirements upon any lessee/permittee, or designated operator who intends to conduct any multiple mineral or material development activity within a multiple mineral or material development area.

5. The agency may hold public meetings regarding the mineral or material development in a multiple mineral or material development area.

6. The agency may grant an extension to a mineral lease

or material permit in a multiple mineral or material development area provided that the mineral lessee, material permittee, or designated operator requests an extension prior to the expiration date of the lease or permit, and that the lessee, permittee, or designated operator would have otherwise been able to request a mineral lease or material permit extension as provided in the Act.

**R850-24-600. Bonding.**

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a mineral lease or material permit, the lessee, permittee, or designated operator shall post with the Utah Division of Oil, Gas and Mining a bond in the form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the mineral lease or material permit involving costs of reclamation, damages to the surface and improvements on the surface, and all other requirements and standards set forth in the mineral lease, material permit, rules, procedures, and policies of the agency and the Utah Division of Oil, Gas, and Mining.

(b) A separate bond may be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease or permit not covered by the bond to be filed with UDOGM, including but not limited to payment of rentals and royalties.

(c) These bonds shall remain in effect even if the mineral lessee, material permittee, or designated operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond is released by UDOGM or the agency either because the lessee, permittee, or designated operator has fully satisfied the bonding obligations set forth in this section or the bond is replaced with a new approved bond posted by a sublessee, assignee, or new designated operator.

(d) The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

(e) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds: shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

(ii) Lessee/Permittee Bonds: shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business

in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

2. Increased amount of bonds.

The agency may increase the required bond amount at any time. The lessee, permittee, or designated operator shall be given thirty (30) days written notice stating the reason(s) for the increase and the new bond amount.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a mineral lease or material permit, the face of the bond and the surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee, permittee, or the designated operator, shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee, permittee, or designated operator, shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all mineral leases or material permits covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the mineral lease or material permit have been met.

(d) Any lessee, permittee, or designated operator forfeiting a bond shall be denied approval of any future exploration or mining on trust-owned lands, except by compensating the agency for previous defaults and posting the full bond amount required by the agency.

#### **R850-24-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

#### **R850-24-800. Transfer by Assignment, Sublease or Otherwise and Overriding Royalties.**

Any mineral lease or material permit may be transferred as to all or part of the acreage, to any person, or entity firm, association, or corporation qualified to hold a lease or permit, provided however, that all transfers of interest are approved by the director. No transfer of interest is effective until written

approval is given. Any transfer of interest made without approval is void.

1. The director shall not withhold approval of any transfer of interest which has been properly executed, for which the required filing fee has been paid for each separate lease or permit in which an interest is transferred, and the transfer complies with the law and these rules, unless the director determines that approval would interfere with the development of the mineral or material resources, or be detrimental to the interests of the trust beneficiaries.

(a) If approval of any transfer is withheld by the director, the transferee shall be notified of such decision and the reason(s) therefore. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

2. Unless otherwise authorized by the agency, a transfer of interest of a portion of a mineral lease or material permit covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone or of a separate deposit will not be approved.

3. A transfer of interest shall take effect the first day of the month following the approval of the transfer by the director. The assignor, sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no transfer of interest had been executed until the effective date of the transfer. After the effective date of any transfer, the transferee is bound by the terms of the mineral lease or material permit to the same extent as if the transferee were the original lessee/permittee, any conditions in the transfer agreement to the contrary notwithstanding.

4. A partial assignment of any mineral lease or material permit shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases or permits shall continue in full force and effect for the primary term of the original lease or permit or as further extended pursuant to the terms of the lease or permit.

(a) The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the partial assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original lease number.

5. A transfer of interest in a mineral lease or material permit or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and shall clearly set forth the serial number of the lease or permit, the land involved, the name and address of the transferee, and the interest transferred.

6. A transfer of interest must affect or concern only one mineral lease or material permit or a portion thereof.

7. Any transfer of interest which would create a cumulative overriding royalty in excess of 20% will not be approved by the agency. Any agreement to create or any assignment creating overriding royalties or payments out of production removed or sold from the leased or permitted lands is subject to approval by the agency, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of the mineral lease or material permit.

8. Mineral lessees or material permittees who are transferring an interest in their mineral lease or material permit shall:

(a) prepare and execute the transfer of interest

agreement(s) in duplicate, complete with acknowledgments;

(b) provide that each copy of the transfer of interest agreement have attached thereto an acceptance of transfer duly executed by the transferee; and

(c) provide that all transfer of interest agreements forwarded to or deposited with the agency be accompanied by the prescribed fee.

9. If an applicant, lessee, or permittee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a death certificate together with other appropriate documentation as the agency may require to verify change of ownership, and a list, by serial number of all mineral lease or material permit interests affected and a statement that all parties are qualified to do business with the agency. The required filing fee must be paid for each separate mineral lease or material permit in which an interest is transferred. A bond rider or replacement bond may be required by the agency for any bond(s) previously furnished by the decedent.

10. If a corporate merger affects mineral leases or material permits where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease permit is required. A notification of the merger shall be furnished with a list, by serial number of all lease or permit interests affected. The required filing fee must be paid for each separate lease or permit in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the merger.

11. If a change of name of a lessee or permittee affects mineral leases or material permits the notice of name change shall be submitted in writing with appropriate documentation evidencing the name change accompanied by a list of leases or permits affected by the name change. The required filing fee must be paid for each separate lease or permit subjected to a transfer of interest. A bond rider or replacement bond to accommodate the name change, conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the change of name.

12. Pre-approval by the agency of a transfer of interest may be sought by the lessee/permittee, and if pre-approval is granted in writing by the director, it shall be binding on the agency subject to conclusion of the particular transfer for which such pre-approval was granted.

#### **R850-24-900. Lease Non-Execution or Cancellation - Fees Forfeited.**

In the event that applicant fails to sign and return a mineral lease or material permit as instructed by the agency, or a lease is cancelled for any other reason, all fees, advance rentals, and advance minimum royalties are forfeited by the applicant, lessee or permittee unless non-forfeiture or a refund is approved by the director.

#### **R850-24-1000. Readjustment of Leases and Permits.**

1. All mineral leases and material permits shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease or the material permit on a periodic basis. The director shall establish as a term of the lease or the permit a schedule for readjustment at the time the lease or permit is offered. A mineral lease which is continued beyond its primary term shall remain subject to such readjustment provision(s).

2. All terms and conditions of a mineral lease and a material permit are subject to readjustment by the agency, including the amount of rent, minimum rental, royalty, minimum royalty, or any other provision as provided in the lease or permit.

3. The terms of the mineral lease or material permit, if readjusted, shall become effective as of the anniversary date specified for readjustment set forth in the lease or permit upon written notification of the readjusted terms.

4. Notice of intent to exercise the agency's right to readjust under the terms of the lease or permit as of the specified anniversary date is timely given if given in writing prior to the specified anniversary date set forth in the lease or permit.

5. The agency shall have up to one year after exercising its option to readjust to review and communicate in writing the final terms of the lease or permit as readjusted.

6. Unless otherwise approved by the director, the lease or permit shall incorporate the terms of the current agency mineral lease or material permit form at the time of readjustment.

7. Failure of the lessee or permittee to accept or appeal the terms of any readjustment within 60 days of mailing by the agency to the last known address of the lessee or permittee, as reflected in the records of the agency, shall be considered a violation of the terms of the lease or permit and shall subject the same to forfeiture.

8. In the event of a conflict between this section and the terms of a readjustment provision in any lease or permit, the lease or permit terms shall supersede to the extent of the conflict.

9. A lessee or permittee may request a readjustment of a lease or permit, and if the director finds the readjustment to be in the best interest of the beneficiaries, such readjustment shall be made.

**KEY: mineral leases, material permits, mineral resources, lease operations**

**March 20, 2006**

**Notice of Continuation April 1, 2010**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-2-402(1)**



**R850. School and Institutional Trust Lands, Administration.****R850-25. Mineral Leases and Materials Permits.****R850-25-100. Classification of Mineral and Material Substances.**

Mineral leases and material permits shall be issued in accordance with the classifications described below. No mineral leases will be issued in conflict with this classification.

**1. Mineral Classification.**

(a) **Metalliferous Minerals:** shall include aluminum, antimony, arsenic, beryllium, bismuth, chromium, cadmium, cesium, columbium, cobalt, copper, fluorspar, gallium, gold, germanium, hafnium, iron, indium, lead, mercury, manganese, molybdenum, nickel, platinum, group metals, radium, silver, selenium, scandium, rare earth metals, rhenium, tantalum, tin, thorium, titanium, tungsten, thallium, tellurium, vanadium, uranium, ytterbium, zinc, and zirconium.

(b) **Potash:** shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

(c) **Phosphate:** shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rock.

(d) **Clay Minerals:** shall mean a fine grained, natural, earthy material composed primarily of hydrous aluminum silicates, plastic-like when wetted, rigid when dried en-masse, and vitrified when fired to a sufficiently high temperature, which shall include kaolin, bentonite, ball clay, fire clay, fuller earth, and clays and clay minerals or shales having unique characteristics giving the mineral deposit distinct and special value, such as carbonaceous shale, humic shale, and baked shale, where the primary value or use is other than building, construction or landscaping.

(e) **Humic shale:** shall refer to a dark colored shaley material containing humic acids or small particles of carbon, original organic tissue or other carbonaceous matter derived from plants and distributed throughout the whole mass. This classification does not include oil shale, bituminous-asphaltic sands, or coal.

(f) **Limestone:** shall include sedimentary rock having a predominant composition chiefly composed of calcium carbonate or calcium magnesium carbonate where the primary value or use is other than building, construction, or landscaping.

(g) **Gemstone and Fossil:** shall include precious, semi-precious or collectable mineral, and petrified material or stone having intrinsic value derived from its attractiveness or uncommon characteristics. This designation includes agate, amber, beryl, calcite, chert, coral, corundum, diamond, feldspar, garnet, geodes, jade, jasper, olivine, opal, pearl, quartz, septarian nodules, spinel, spodumene, topaz, tourmaline, turquoise, and zircon; and coquina, petrified wood, trilobites, and other common fossilized flora and invertebrate fauna.

(h) **Gypsum:** a natural hydrated calcium sulfate that includes alabaster, anhydrite, gypsum, satin spar, and selenite

(i) **Gilsonite:** a solid asphaltum found in place, in a vein, a lode, or rock.

(j) **Volcanic Material:** includes volcanic pyroclastic material such as ash, blocks, bombs, and tuff; glassy volcanic glass material including obsidian, perlite, pitchstone, pumice, scoria, and vitrophyre; and other uncommon volcanic materials where the primary value or use is other than building, construction, or landscaping.

(k) **Industrial Sands:** includes uncommon, naturally occurring sands having properties or containing minerals having special use in industrial processes or applications as

determined by the director. This designation includes abrasive sands, filler sands, foundry sands, frac sands, glass sands, lime sands, magnetic sands, and silica sands.

(l) **Mineral Salts:** shall include all naturally occurring salts.

**2. Material Classification.**

(a) Material permits may be issued for common varieties of clay or stone having a primary value or use in building, construction, or landscaping, including basalt, common clay, conglomerate, flagstone, gabbro, granite, lava aggregate, limestone, marble, onyx, quartzite, rhyolite, riprap, sandstone, serpentine, shale, slate, soapstone, trapstone, travertine, whether crushed, sized, dimensioned, or unprocessed, and when the director deems it consistent with agency plans and trust responsibilities.

(b) No material permits will be issued in conflict with the Mineral Lease Classification under R850-25-100(1).

**3. Non-Classified Minerals or Materials.**

Mineral leases or material permits may also be issued for minerals or materials not listed under Subsections R850-25-100(1) and (2) at the discretion of the director. Alternatively, the director may issue a mineral lease or material permit for a non-classified mineral or material that is closely associated with a classified mineral or material so long as the mineral or material is specified as a leased or permitted substance in the mineral lease or material permit.

**4. Close Association Minerals or Materials.**

A mineral lease or material permit may include other minerals or materials found in close association with the expressly leased mineral or permitted material, when the substance cannot reasonably be mined separately or mined and separated.

**5. Multiple Classified Minerals.**

Mineral leases may also be issued to include a combination of classified minerals.

**R850-25-200. Mineral Lease Issuance.**

1. The director may issue mineral leases competitively, non-competitively or enter into joint ventures or other business arrangements for the disposition of mineral deposits in accordance with the Act.

2. A mineral lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Mineral leases shall be limited to no more than 2,560 acres or four sections unless approved by the director.

4. A mineral lease may be terminated by the director in whole or part for lessee's failure to comply with any term or condition of the lease or applicable laws and rules.

**R850-25-300. Mineral Lease Provisions.****1. Rentals and Rental Credits.**

(a) The director shall establish the rental rate for the primary lease term at the time the mineral lease is offered. The rental shall not be less than \$1 per acre per year.

(b) Rental payments shall be paid in advance each year on or before the mineral lease anniversary date, unless otherwise stated in the mineral lease.

(c) The minimum annual rental on any mineral lease shall not be less than \$500.

(d) The rental payment for a mineral lease year may be credited against production royalties only as they accrue for that lease year, unless otherwise provided for in the mineral lease.

(e) Any overpayment of rental occurring from the mineral lease applicant's incorrect listing of acreage of lands described in the application may, at the option of the director, be credited toward the applicant's rental account.

(f) The director shall accept rental payments made by

any party, but the acceptance of rental shall not be deemed to be recognition of any interest of the payee in the lease.

2. Royalty and Minimum Royalty.

(a) The director shall establish the production royalty rate(s) at the time the mineral lease is offered.

(b) The director shall establish the annual minimum royalty rate(s) at the time the mineral lease is offered.

3. Primary Mineral Lease Term.

(a) The director shall establish the mineral lease primary term at the time the lease is offered.

(b) The primary lease term for any mineral lease shall not exceed ten (10) years unless approved as part of an OBA.

4. Continuance of Mineral Lease After Expiration of Primary Term.

A mineral lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the mineral lease or an approved mining unit; or

(b) the director determines that the lessee:

(i) is engaged in diligent operations, exploration, or development which is reasonably calculated to advance development or production of the leased substance; or

(ii) has made substantial financial investments for the direct purpose of advancing development or production of the leased substance; and

(iii) pays the annual minimum royalty set forth in the mineral lease.

5. Readjustment of Mineral Lease.

All mineral leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease on a periodic basis, and such readjustment shall be made in accordance with R850-24-1000.

6. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the mineral lease as it deems necessary.

**R850-25-400. Material Permit Issuance.**

1. The agency may issue material permits competitively, non-competitively, or enter into joint ventures or other business arrangements for the disposition of material deposits. In the event that a material permit is offered competitively and there are competing applications submitted, the agency will award the material permit based on the following criteria:

(a) amount of bonus bid;

(b) amount and rate of proposed materials extraction; and

(c) other criteria and assurances of performance as the agency shall require prior to bidding.

2. The agency may issue material permits "over-the-counter" in areas that have been designated by the director as open for such sales.

3. A material permit shall not be issued for a parcel less than one quarter-quarter section, or surveyed lot unless approved by the director.

4. Any material permit may be terminated by the agency in whole or part for permittee's failure to comply with any term or condition of the permit or applicable laws or rules.

**R850-25-500. Material Permit Provisions.**

1. Rentals.

(a) The director shall establish the rental rate for a material permit, which shall not be less than \$10 per acre, or fractional part thereof, per annum.

(b) The minimum annual rental on material permits shall be determined periodically by the agency.

2. Royalty and Minimum Royalty.

(a) The director shall establish the royalty rate based

upon the agency's analysis of the local market for the commodity.

(b) The director will establish annual minimum royalty rates for material permits based on the type of material being removed. The agency may adjust the rates at any time in accordance with the terms of the permit.

3. Material Permit Term.

(a) Material permits issued under these rules shall be for a term as specified in the terms and conditions of the material permit.

(b) All material permits shall expire at the end of five years, unless otherwise specified in the permit. Upon request of the permittee, the director may reissue the permit on the same terms or on readjusted terms. In no event shall a material permit continue for a period longer than five years without review and a determination by the director that reissuance on the same or readjusted terms is in the best interest of the beneficiaries.

4. Other Permit Provisions.

The director may require, in addition to the above permit provisions, other provisions to be included in the material permit as it deems necessary.

**R850-25-600. Existing Mineral Lease and Material Permit Conversion.**

Existing mineral leases and material permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the terms and provisions contained in the lease or permit. The agency may however, allow such lessees/permittees to convert such existing leases or permits to the new lease or permit, providing such conversion will not conflict with the valid existing rights of any other mineral lessee or material permittee or owner upon the same lands.

**R850-25-700. Mineral Lease and Material Permit Application Process.**

1. Applications for mineral leases or material permits, except in the case of competitive filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day shall be stamped received as of 8 a.m. on that day. All applications received in the first delivery of the U.S. Mail of each business day shall be stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the agency determines that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it will be returned to the applicant.

2. Except in cases of competitive filing, if two or more applications for the same mineral lease or material permit contain identical bids and bear a time stamp showing the applications were filed at the same time, the agency will award the mineral lease or material permit by public drawing or oral auction.

3. Competitive Filing.

(a) The minimum acceptable bid for competitive filing of applications for a mineral lease or material permit shall be at least equal to the rental rate for the first year of the lease.

(b) Notices of the offering of lands for competitive filing will run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office.

(c) Where applicants wish to submit applications for competitive filing, such applications shall be submitted in

separately sealed envelopes and marked for competitive filing.

4. Rejection.

If an application, or any part thereof, is rejected, any money tendered for rental on the rejected portion shall be refunded or credited.

5. Application Withdrawal.

(a) Should an applicant desire to withdraw his/her application, the applicant must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered mineral lease or material permit, all money tendered is forfeited to the agency, unless otherwise approved by the director for good cause shown.

(b) Applicants desiring to withdraw an application which has been filed under the competitive filing rules above, must submit a written request to the agency. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered mineral lease or material permit, all money tendered shall be forfeited to the agency, unless otherwise approved by the director for good cause shown.

**R850-25-800. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, mining or other operations, the lessee/permittee shall submit a plan of operations to the agency in accordance with the terms and conditions established by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee/permittee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee/permittee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: mineral classification, lease provisions, administrative procedures, permit terms**

April 1, 2005 53C-1-302(1)(a)(ii)  
Notice of Continuation April 1, 2010 53C-2-201(1)(a)  
53C-2-402(1)

**R850. School and Institutional Trust Lands, Administration.****R850-26. Coal Leases.****R850-26-100. Definitions.**

In addition to those applicable definitions in R850-24-175, the following definitions also apply to this section:

1. Lease: a lease in a coal resource as defined in R850-26-150.
2. Lessee: a person or entity holding an interest in a coal lease.

**R850-26-150. Classification of Coal Resources.**

"Coal" shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I Anthracite, II Bituminous, III Sub-Bituminous, and IV Lignitic.

**R850-26-200. Coal Leasing of Lands Acquired in Public Law 105-335 Exchange.**

1. Acquired lands shall mean lands acquired by the agency pursuant to the Utah Schools and Lands Exchange Act of 1998, Public Law 105-335, 112 Stat. 3139 (1998)(the "Exchange Act").

2. Leasing of coal interests in the acquired lands shall be governed by applicable provisions of state law, the Exchange Act, that certain Memorandum of Understanding Between the Utah School and Institutional Trust Lands Administration, the United States Department of Agriculture, and the United States Department of the Interior dated January 5, 1999, as amended from time to time, and by those certain provisions of R850-24 and R850-26 not in conflict with this section.

3. The director shall have broad discretion to determine terms, conditions and procedures for leasing coal interests in the acquired lands by competitive filing, including without limitation:

- (a) the determination of rental rates;
- (b) lease forms and lease stipulations for particular tracts;
- (c) the amount of any required bid deposit;
- (d) the minimum acceptable bid for particular tracts;
- (e) terms of payment for bonus bids; and
- (f) bidding procedures generally.

4. The director may, but is not obligated to, disclose the minimum acceptable bid in advance of offering the lease by competitive filing.

5. In the event that the high bid in any competitive bid filing does not meet the minimum acceptable bid previously determined by the director, the director may, but is not obligated to, negotiate with the high bidder to obtain a negotiated bid that, in the discretion of the director, represents fair market value. Alternatively, the director may re-offer the lands for competitive filing, hold an oral auction of the lands pursuant to Subsection 53C-2-407(4), or withdraw the lands from leasing.

6. Nothing in this rule shall prevent the agency from leasing or otherwise disposing of coal interests in the acquired lands pursuant to Subsection 53C-2-401(1)(d)(ii), subject to compliance with applicable law.

**R850-26-300. Coal Lease Provisions.**

1. Royalty and Minimum Royalty.

(a) The director shall establish the production royalty rate, not to be less than 8%.

(b) The director shall establish the annual minimum royalty rate(s) at the time the lease is offered.

2. Size of Leaseable Tract.

A lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the

director.

3. Primary Coal Lease Term.

The primary lease term for any lease may not exceed ten (10) years.

4. Continuance of Coal Lease After Expiration of Primary Term.

A lease shall be continued after the primary term has expired so long as:

- (a) coal is being produced in paying quantities from the lease or an approved mining unit; or
- (b) the agency determines that the lessee:
  - (i) is engaged in diligent operations, exploration, or development which is reasonably calculated to advance development or production of the coal resource; or
  - (ii) has made substantial financial investments for the direct purpose of advancing development or production of the coal resource; and
  - (iii) pays the annual minimum royalty set forth in the lease.

5. Readjustment of Coal Lease.

All leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the lease on a periodic basis, and such readjustment shall be made in accordance with R850-24-1000. A lease continued after expiration of its primary term shall be subject to such readjustment provision(s).

6. Other Lease Provisions.

(a) The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the lease as it deems necessary.

**R850-26-400. Existing Coal Lease Conversion.**

Existing leases issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease and shall be subject to the terms and provisions contained in the lease. The agency may, however, allow such lessees to convert such existing leases to the new lease, providing such conversion will not conflict with the valid existing rights of any other lessee or owner upon the same lands.

**R850-26-450. Coal Exploration Permit.**

The director may issue non-exclusive short-term exploration permits upon unleased trust lands for the purpose of conducting exploration drilling operations, according to the following terms:

1. Applications for a coal exploration permit shall include an application fee.

2. The application shall specify the location and number of exploratory drilling holes, and applicant shall pay a drilling fee as specified on the agency's fee schedule for each exploratory drilling hole approved by the agency.

3. Prior to commencing operations, the coal exploration permittee must obtain a coal exploration permit from UDOGM, and must provide 60 days' notice of intent to drill to the agency.

4. A bond for reclamation and drill hole plugging must be posted prior to the commencement of operations.

5. The coal exploration permittee must file a true and complete copy of all drilling logs and geological reports associated with the drilling project with the agency at the conclusion of drilling operations.

**R850-26-500. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, mining or other operations, the lessee shall submit a plan of operations to the agency in accordance with the terms and conditions established by the agency, as set forth in R850-24-700. Under no circumstance

shall the lessee/permittee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: coal, lease provisions, administrative procedures, plan of operation**

<b>April 1, 2005</b>	<b>53C-1-302(1)(a)(ii)</b>
<b>Notice of Continuation April 1, 2010</b>	<b>53C-2-201(1)(a)</b>
	<b>53C-2-401(1)(d)(ii)</b>
	<b>53C-2-402(1)</b>
	<b>53C-2-407(4)</b>

**R850. School and Institutional Trust Lands, Administration.****R850-27. Geothermal Steam.****R850-27-100. Definitions.**

1. In addition to those applicable definitions in R850-24-175, the following definitions shall apply to this section:

- (a) Lease: a geothermal steam lease.
- (b) Lessee: a person or entity holding a record title interest in a geothermal steam lease.
- (c) Shut-In Geothermal Well: a geothermal well capable of producing in paying quantities, but which cannot be marketed at a reasonable price due to existing market conditions.

**R850-27-200. Geothermal Steam Lease Issuance.**

1. The agency shall issue leases competitively, non-competitively or enter into joint ventures or other business arrangements for the leasing of geothermal steam resources only on lands where the agency owns both the surface and mineral rights.

2. A lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Leases shall be limited to no more than 640 acres or one section unless approved by the director.

4. Any lease may be terminated by the agency in whole or part upon lessee's failure to comply with any term or condition of the lease or applicable laws and rules.

**R850-27-300. Geothermal Steam Lease Provisions.****1. Rentals and Rental Credits.**

(a) The director shall establish the rental rate, not less than \$1.00 per acre per year, at the time the lease is offered. The minimum annual rental on any lease shall not be less than \$40.

(b) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.

(c) The rental payment for a lease year shall be credited against production royalties only as they accrue for that lease year, unless otherwise provided for in the lease.

(d) Any overpayment of advance rental occurring from the lease applicant's incorrect listing of acreage of lands described in the application shall be credited toward the applicant's rental account.

(e) The agency may accept rental payments made by any party, provided however, that the acceptance of such payment(s) shall not be deemed to be recognition of any interest of the payee in the lease.

**2. Royalty Rate.**

(a) The director shall establish the production royalty rate, not to be less than 10%, unless otherwise established by the director, at the time the lease is offered.

**3. Primary Geothermal Steam Lease Term.**

(a) The director shall establish the lease primary term, not to exceed ten (10) years, at the time the lease is offered.

4. Continuance of a Geothermal Steam Lease After Expiration of Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises, from lands pooled, communitized, or unitized with the leased premises or from an approved drilling unit with respect to the leased premises; or

(b) the agency determines that the lessee:

(i) is engaged in operations, exploration, or development which are diligent and are reasonably calculated to advance development or production of the leased substance from the

leased premises, from lands pooled, communitized, or unitized with the leased premises, or lands constituting an approved drilling unit with respect to the leased premises (diligent operations may include cessation of operations not in excess of 90 days in duration), and

(ii) pays the annual minimum royalty set forth in the lease.

**5. Readjustment.**

All geothermal leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the lease on a periodic basis, and such adjustment shall be made in accordance with R850-24-1000.

**6. Unitization of Geothermal Leases.**

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands to unit, cooperative, or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of geothermal steam development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any such lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities.

(f) Rentals under such leases shall continue at the rate specified in the lease.

**7. Shut-In Geothermal Wells Considered to be Producing in Paying Quantities**

(a) The director shall establish the minimum rental, not to be less than \$1.00 per acre per year nor more than twice the annual lease rental provided for in the lease, for a shut-in geothermal well.

(b) The director shall establish the minimum royalty, to be not less than 10% nor more than twice the annual lease rental provided for in the lease, for a shut-in geothermal well.

(c) The terms of the lease shall provide the basis upon which the minimum rental or minimum royalty is to be paid by the lessee for a shut-in geothermal well.

(d) The director may, at any time, require written verification from the lessee that a geothermal well qualifies as a shut-in geothermal well.

**8. Other Lease Provisions.**

The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the lease as it deems necessary.

**R850-27-400. Existing Geothermal Steam Lease Conversion.**

Existing leases issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease and shall be subject to the terms and provisions contained in the lease. The agency may, however, allow such lessees to convert such existing leases to

the new lease, providing such conversion will not conflict with the valid existing rights of any other lessee or owner upon the same lands.

**R850-27-500. Geothermal Steam Lease Application Process.**

1. Applications for leases, except in the case of competitive bid filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day shall be stamped received as of 8 a.m. on that day. All applications received in the first delivery of the U.S. Mail of each business day shall be stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the agency determines that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it will be returned to the applicant.

2. Except in cases of competitive bid filing, if two or more applications for the same lease contain identical bids and bear a time stamp showing the applications were filed at the same time, the agency will award the lease by public drawing or oral bidding.

3. Competitive Bid Filing.

(a) The minimum acceptable bid for competitive bid filing of applications for a lease shall be at least equal to the rental rate for the first year of the lease.

(b) Notices of the offering of lands for competitive bid filing will run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office.

(c) Where applicants wish to submit applications for competitive bid, such applications shall be submitted in separately sealed envelopes and marked for competitive bid filing.

4. If an application or any part thereof is rejected, any money tendered for rental for the rejected portion shall be refunded or credited.

5. Application Withdrawal.

(a) Should an applicant desire to withdraw his application, the applicant must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency, unless otherwise approved by the director, for good cause shown.

(b) Applicants desiring to withdraw an application which has been filed under the competitive bid filing rules above, must submit a written request to the agency. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency, unless otherwise approved by the director for good cause shown.

**R850-27-600. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, or other operations, lessee shall submit a plan of operations to the agency in accordance with the terms and conditions required by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee commence operations without a plan of operation approved

by the agency

2. The agency shall require the lessee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: geothermal steam, lease provisions, administrative procedures, plan of operations**

**April 1, 2005**

**Notice of Continuation April 1, 2010**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-2-402(1)**

**R916. Transportation, Operations, Construction.****R916-1. Advertising and Awarding Construction Contracts.****R916-1-1. Authority and Purpose.**

This rule establishes the procedures for the advertising and awarding of Utah Department of Transportation construction contracts. This rule is authorized under Sections 72-1-201, 72-6-107, 63G-6-505, and Subsection 63G-6-207(3).

**R916-1-2. Definitions.**

(1) Terms used in this rule are defined in Section 72-1-102.

(2) In addition, "Notice to Contractors" means the advertisement or public announcement inviting bids for work to be performed or materials to be furnished.

**R916-1-3. Invitation for Bids.**

(1) The department shall prepare a notice to contractors inviting bid proposals on each project. The notice to contractors shall specify the type of construction, the location, the principal items of work, and the bid opening time and date.

(2) The advertisement for bids shall be published for a minimum period of two weeks in a newspaper of general circulation in the county in which the work is to be performed.

(3) Contractors and suppliers may receive notice to contractors by requesting their name be placed on a distribution list which is maintained by the department.

**R916-1-4. Bidding Proposals, Plans and Specifications.**

(1) Bidding proposals, plans and specifications shall be available for inspection at all Region offices, Cedar City, Price, Richfield and Salt Lake City headquarters. Plans are available for download at the department's website, [www.udot.utah.gov](http://www.udot.utah.gov).

(2) Prior to submitting a bid, the bidder shall become prequalified at least 10 working days prior to bid opening date, under Rule R916-2 concerning prequalification of contractors. Prequalification of bidders is not required on projects estimated under \$1,500,000.

(3) Prequalified contractors may obtain bidding proposals, plans and specifications and non-prequalified contractors may obtain non-bidding plans and specifications from the department's website, [www.udot.utah.gov](http://www.udot.utah.gov).

(a) Projects shall not be awarded when the sum of the amount of uncompleted work, both in and outside of the state of Utah, shown on the contractor's "Status of Work Under Contract" form and the bid amount submitted exceeds the amount for which the contractor is prequalified. This transaction is performed at the close of bid opening for all apparent low bidders, on all projects with an advertised engineer's estimate over \$1,500,000.

(b) Two or more contractors who have prequalified separately and desire to enter a joint bid on a single project may do so upon submitting a letter of intent to the department prequalification secretary at least four working days prior to bid opening. The prequalification of each contractor can then be considered for consolidation to place a bid as prime.

(4) If it is necessary to issue an addendum to the plans and specifications during the advertising period, the department shall fax a copy to the prime bidders, then mail a copy of the addendum by certified mail to each contractor holding bidding proposals.

**R916-1-5. Bidding Requirements and Conditions.**

(1) Each bidder shall submit their proposal upon the forms furnished by the department.

(2) Sealed proposals shall be submitted to the department prior to the time and at the place specified in the notice to contractors.

(3) Proposals shall be publicly opened and read at the time and place indicated in the notice to contractors.

(4) No proposal shall be considered unless accompanied by a guaranty in the form of certified check, cashier's check or guaranty bond for not less than five percent of the total amount of the bid.

(5) Each bidder must comply with the laws of Utah relative to the licensing of contractors. A contractor's license is required prior to the submission of a bid, except that a contractor may submit a bid on a Federal-aid highway project without having first obtained a license, provided the contractor, prior to undertaking any construction under that bid (at time of official award notification), shall be licensed in Utah.

(6) The right to reject any or all proposals is reserved by the department.

**R916-1-6. Award of Contracts.**

(1) The department shall award the contract to the lowest responsible and qualified bidder.

(2) When all bids received exceed the engineer's estimate by more than 10%, the department reserves the right to either accept the low bid or to reject all bids.

(3) The award, if made, shall be within 30 days after the opening of proposals. The department may, subject to approval of the successful bidder, withhold the award beyond the 30 day time frame. After 30 days, if no award has been made, the contractor may withdraw their proposal without liability.

(4) The successful bidder shall be notified, by mail using the address shown on their proposal, that they have been awarded the contract.

(5) The department reserves the right to cancel the award of any contract at any time before the execution of the contract by all parties with no liability against the department.

**R916-1-7. Execution of Contracts.**

(1) Unless the bonds are waived pursuant to Subparagraph (6), when the contract is executed, the successful bidder shall furnish a performance bond and a payment bond, each in a sum equal to the full amount of the contract. Each bond shall be on the form provided by the department and shall be executed by a surety company or companies licensed by the state of Utah. These companies must be listed on the current United States Department of the Treasury Circular 570 as acceptable sureties on Federal bonds. The department shall make available to the public this Circular at the following locations: Construction Division, UDOT Library, and Internet.

(2) The contract shall be signed by the successful bidder and returned together with the fully executed contract bonds and appropriate insurance documents within 15 days after the contract has been awarded.

(3) Failure to execute a contract and file acceptable bonds and appropriate insurance documents within 15 days after the contract has been awarded shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty.

(4) If the contract is not executed by the Department within 30 days after receiving signed contracts, bonds, and insurance documentation, the bidder shall have the right to withdraw their bid without penalty.

(5) No contract shall be considered effective until it has been fully executed by all the parties thereto.

(6) In accordance with Utah Code Ann. Section 63G-6-505, the Executive Director or designee may reduce or waive



the amount of the payment and performance bonds below the 100% normally required, if he or she determines that the circumstances are such that the normal bonding requirement is unnecessary to protect the State.

**KEY: bids, advertising, contracts, bonding requirements**  
**January 3, 2007** 72-1-201  
**Notice of Continuation November 29, 2006** 72-6-107  
63G-6-505  
63G-6-207(3)

**R916. Transportation, Operations, Construction.****R916-3. DESIGN-BUILD Contracts.****R916-3-1. Purpose.**

(1) This rule is to provide guidance under which the Utah Department of Transportation (UDOT) may use the DESIGN-BUILD approach to contracting pursuant to Section 63G-6-502. DESIGN-BUILD seeks to provide: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

**R916-3-2. Authority.**

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 6; Title 63G, Chapter 3; and Section 72-1-201.

**R916-3-3. Policy.**

(1) UDOT may use, where determined appropriate by the Executive Director, the DESIGN-BUILD method of project delivery. When DESIGN-BUILD is used, UDOT shall enter into a contract with a single entity to provide both engineering/design services, construction services, and/or maintenance services pursuant to a UDOT provided scope of work statement. DESIGN-BUILD is not recommended for every project. The use of the DESIGN-BUILD method may be determined by the individual needs and merits of the project.

**R916-3-4. Pre-qualification.**

(1) UDOT may issue a Request for Qualifications, RFQ, soliciting qualification statements from contractors wishing to submit proposals on a UDOT design-build project. The RFQ shall state the minimum and maximum number of highly qualified proposers that will be invited to submit final proposals.

(2) Pre-qualification shall be based on an evaluation of the criteria set forth in the RFQ, including construction experience; design experience; technical competence; capability to perform, including financial, manpower and equipment resources; experience in other design-build projects; and past performance.

(3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ. Failure to achieve at least two qualified proposers shall necessitate the resolicitation of the project.

**R916-3-5. Preparation of Specifications.**

(1) UDOT may use any method of specifying construction items which the Executive Director determines is in the best interest of UDOT. Engineering firms who participated in preparation of specifications used in the procurement for a portion (but not all) of the project shall have the right to participate as proposers.

**R916-3-6. Request for Proposals (RFP).**

(1) The pre-qualified proposers shall be invited to submit proposals on the designated design-build project pursuant to an RFP. UDOT may elect to ask for initial proposals followed by discussions and best and final offers, or may elect to award the contract without discussions or best and final offers. The RFP may ask for proposals based on a stipulated sum.

(2) UDOT may award a stipulated fee to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the fee (if any) shall be identified in the RFP.

(3) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP. The RFP may require proposals to meet a mandatory technical level, and may include a request for alternative proposals.

(4) Technical solutions/design concepts contained in proposals shall be considered proprietary information unless a stipulated fee is paid.

**R916-3-7. Evaluation of Proposals and Discussions with Proposers.**

(1) UDOT shall evaluate the technical and price proposals separately, in accordance with the evaluation factors set forth in the RFP.

(2) UDOT may offer the proposers the opportunity to participate in presentations and/or discussions regarding their proposals. Discussions, either oral or in writing, may be held with proposers for the purpose of clarification of the proposals and/or to identify deficiencies in initial proposals. If presentations or discussions are held with one proposer, they must be held with all pre-qualified proposers.

(3) If discussions are held, best and final offers will be requested. If best and final offers are requested they will be the basis for award and will be evaluated as stated in the RFP.

**R916-3-8. Acceptable Bid Security; Performance and Payment Bonds.**

(1) The Executive Director shall have the right to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Utah Code Sections 63-56-37 through 39 to be unnecessary to protect the State.

(2) The Executive Director shall have the right to reduce the amount of the payment and performance bonds below the 100% level required by Utah Code Sections 63G-6-504 through 507, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

**R916-3-9. Required Contract Clauses.**

The design-build contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-60, subject to such modifications as the Executive Director deems advisable. Any modifications shall be supported by a written determination of the Executive Director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

**R916-3-10. Award and Contract.**

The basis for award shall be stated in the RFP. Award may be based on any of the following approaches (all of which shall be deemed to constitute award to the lowest responsible bidder as such term is used in Utah Code Section 63G-6-502):

(1) Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level.

(2) Award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

(3) If the RFP provides for a stipulated sum, award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

There is no requirement that a contract be awarded. Following award a contract shall be executed and notice given to the successful design-build proposer to proceed with the work.

**KEY: construction, contracts, DESIGN-BUILD,**

highways  
December 31, 1996  
Notice of Continuation November 29, 2006

63G-6-502

**R916. Transportation, Operations, Construction.****R916-4. Construction Manager/General Contractor Contracts.****R916-4-1. Purpose.**

(1) Pursuant to Utah Code Ann. Section 63G-6-207, this rule establishes the Department's ability to procure transportation construction under the Construction Manager/General Contractor (CM/GC) approach authorized in Utah Code Ann. Section 63G-6-502. CM/GC seeks to provide: a savings of time, and cost; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses, early and continuous and coordination of efforts.

**R916-4-2. Authority.**

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 6; Title 63G, Chapter 3; and Sections 72-1-201, 72-5-114, and 72-6-105.

**R916-4-3. Policy.**

(1) When the Executive Director or designee determines it appropriate, Department may use CM/GA method of project delivery. CM/GC is not recommended for every project; therefore, the decision to use the method must take into account the individual specific needs of the project.

**R916-4-4. Request for Proposals (RFP).**

(1) The Department will issue a request for proposals (RFP) from interested contractors.

(2) The RFP may require separate technical and price proposals, meeting requirements as stated in the RFP.

(3) The RFP may require a minimum mandatory technical level.

**R916-4-5. Evaluation Team.**

(1) The Department may establish a team for evaluating the technical proposals consisting of not more than 7 people.

(2) At least one member of the team may be a registered professional engineer; and

(3) At least one member may be a senior management employee of a licensed contractor.

**R916-4-6. Evaluation of Proposals and Discussions with Proposers.**

(1) The Department shall evaluate proposals, in accordance with the evaluation factors set forth in the RFP.

(2) As part of the qualifications specified in the RFP, the Department may require that potential contractors at least demonstrate their:

- (a) construction experience in similar projects;
- (b) financial, manpower and equipment resources available for the project;
- (c) experience in other negotiated contracts; and
- (d) preconstruction or design support experience.

**R916-4-7. Acceptable Bid Security; Performance and Payment Bonds.**

(1) The Executive Director or designee shall have the right to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Utah Code Ann. Sections 63G-6-504 through 507 to be unnecessary to protect the State.

(2) The Executive Director or designee may reduce the amount of the payment and performance bonds below the 100% level required by Utah Code Ann. Sections 63G-6-501 through 507, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

**R916-4-8. Required Contract Clauses.**

The CM/GC contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-7, subject to such modifications as the Executive Director or designee believes appropriate. Any modifications shall be supported by a written determination of the Executive Director or designee that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

**R916-4-9. Selection.**

The basis for selection shall be stated in the RFP. Selection may be based on any of the following approaches.

(1) By the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level; or

(2) By the responsible proposer whose proposal is evaluated as providing the best value to Department.

**R916-4-10. Award of Contract.**

(1) The Contract will be awarded in two phases. The first is for preconstruction or design services, which may include value engineering, cost estimating, conceptual estimating, constructability reviews, scheduling, and Maintenance of Traffic plans.

(2) The second phase is for construction services. The second phase will be awarded after the plans have been sufficiently developed and a Guaranteed Maximum Price for construction services has been successfully negotiated. In the event that a Guaranteed Maximum Price is not negotiated, the Department will not award construction phase of the contract.

(3) In order to accelerate completion, incremental construction phases may be awarded after Guaranteed Maximum Prices are negotiated for each phase.

(4) The Department is not required to ever award a contract. Following award, however, a contract shall be executed and notice given to the successful CM/GC proposer to proceed with the work.

**KEY: transportation, highways, contracts, construction****June 27, 2005****63G-6-502****Notice of Continuation March 11, 2010****63G-6-207****72-1-201**

**R986. Workforce Services, Employment Development.****R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

**R986-200-202. Family Employment Program (FEP).**

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
  - (i) a licensed medical doctor;
  - (ii) a doctor of osteopathy;
  - (iii) a licensed Mental Health Therapist as defined in

UCA 58-60-102;

- (iv) a licensed Advanced Practice Registered Nurse; or
- (v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

**R986-200-203. Citizenship and Alienage Requirements.**

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet

alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA;

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

**R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client

has attended the meeting.

**R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or

local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

**R986-200-206. Participation Requirements.**

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving

assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

#### **R986-200-207. Participation in Child Support Enforcement.**

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

- (a) reaches age 18;
- (b) is 18 years old and enrolled in high school during the normal and expected year of graduation;
- (c) is emancipated by marriage or court order;
- (d) is a member of the armed forces of the United States; or
- (e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation

procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

- (a) the client is a specified relative who is not included in the household assistance unit;
- (b) the client is a parent receiving SSI benefits; or
- (c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

#### **R986-200-208. Good Cause for Not Cooperating With ORS.**

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

- (a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:
  - (i) birth certificates;
  - (ii) medical records;
  - (iii) Department records;
  - (iv) records from another state or federal agency;
  - (v) court records; or
  - (vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

#### **R986-200-209. Participation in Obtaining an Assessment.**

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used

to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

#### **R986-200-210. Requirements of an Employment Plan.**

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find



employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

#### **R986-200-211. Education and Training As Part of an Employment Plan.**

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the

education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

#### **R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.**

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by \$100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the \$100 reduction month, financial assistance will be terminated beginning the month following the \$100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be

ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

#### **R986-200-213. Financial Assistance for a Minor Parent.**

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the

minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

#### **R986-200-214. Assistance for Specified Relatives.**

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the

child is ineligible unless there is a court order removing the child from the parent(s) home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

**R986-200-215. Family Employment Program Two Parent Household (FEPTP).**

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP

including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

**R986-200-216. Diversion.**

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

**R986-200-217. Time Limits.**

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

#### **R986-200-218. Exceptions to the Time Limit.**

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from

engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

- (b) sexual abuse;
  - (c) sexual activity involving a dependent child;
  - (d) threats of, or attempts at, physical or sexual abuse;
  - (e) mental abuse which includes stalking and harassment; or
  - (f) neglect or deprivation of medical care.
- (3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

#### **R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.**

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due

payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

#### **R986-200-220. Mentors.**

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
  - (i) the volunteer mentor;
  - (ii) the Department; or
  - (iii) civic organizations.

#### **R986-200-230. Assets Counted in Determining Eligibility.**

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

#### **R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.**

The following are not counted as an asset when determining eligibility for financial assistance:

- (1) the home in which the family lives, and its contents,

unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

#### **R986-200-232. Considerations in Evaluating Real Property.**

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month

period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

#### **R986-200-233. Considerations in Evaluating Household Assets.**

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

#### **R986-200-234. Income Counted in Determining Eligibility.**

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

#### **R986-200-235. Unearned Income.**

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value

of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

#### **R986-200-236. Earned Income.**

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps\*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

#### **R986-200-237. Lump Sum Payments.**

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay,

including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

**R986-200-238. How to Calculate Income.**

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

**R986-200-239. How to Determine the Amount of the Financial Assistance Payment.**

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received

a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

Household Size	Payment Amount
1	\$288
2	\$399
3	\$498
4	\$583
5	\$663
6	\$731
7	\$765
8	\$801

Amounts for household sizes larger than 8 are available at all Department offices.

**R986-200-240. Additional Payments Available Under Certain Circumstances.**



(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

- (a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;
- (b) full-time attendance in an education or employment training program; or
- (c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

**R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.**

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2)

of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

**R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.**

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

- (i) the parents or stepparents living in the home;
- (ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

**R986-200-243. Counting the Income of Sponsors of Eligible Aliens.**

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

#### **R986-200-244. TANF Needy Family (TNF).**

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

#### **R986-200-245. TANF Non-FEP Training (TNT).**

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under

the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

#### **R986-200-246. Transitional Cash Assistance.**

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a reduction or termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

#### **R986-200-250. Basic Education Training Provider.**

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

#### **R986-200-251. Types of Basic Education Training Providers and Approval Requirements.**

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following:

- (a) a birth certificate,
- (b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:
  - (i) any matters involving an alleged sexual offense;
  - (ii) any matters involving an alleged felony or class A misdemeanor drug offense; or
  - (iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.
- (c) a resume with tutoring-related work history or subject matter knowledge,
- (d) three letters of recommendation addressing suitability as a tutor, and
- (e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and;

- (a) have been in business in Utah for at least one year;
- (b) meet all state and local licensing requirements;
- (c) have a satisfactory record with the Better Business Bureau;
- (d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:
  - (i) balance sheet, income statement and a statement of changes in financial position;
  - (ii) copy of the most recent annual business audit; or
  - (iii) copies of each owner's most recent personal income tax return.
- (e) submit a current Utah Business License showing at least one year in business, and
- (f) submit an approved grievance procedure for clients to use in making complaints.
- (g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

- (a) program completion rates for all individuals enrolled;
- (b) the type of certification students completing the program will obtain;
- (c) the percentage rate of certification attained by program graduates; and
- (d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

#### **R986-200-252. Renewal and Revocation of Approval for**

#### **Training Providers.**

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(2) Providers must retain participant program records for three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

- (a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;
- (b) has committed fraud or violated applicable state or federal law, rule, or regulation;
- (c) intentionally supplies inaccurate student or program performance information;
- (d) fails to complete the review process; or
- (e) has lost approval, accreditation, licensing, or certification from any of the following:
  - (i) Utah Division of Consumer Protection,
  - (ii) USOE,
  - (iii) Northwest Association of Accredited Schools, or
  - (iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

- (a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;
- (b) there is a lifetime ban for a provider who has committed fraud as a provider;
- (c) providers removed for other violations of state or federal law will be suspended:
  - (i) until the provider can prove it is no longer in violation of the law for minor violations;
  - (ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or
  - (iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

#### **R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.**

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-

100.

**KEY: family employment program**  
**April 1, 2010** 35A-3-301 et seq.  
**Notice of Continuation September 14, 2005**

**R986. Workforce Services, Employment Development.****R986-700. Child Care Assistance.****R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.**

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

**R986-700-702. General Provisions.**

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working from an approved child care center.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local

office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

**R986-700-703. Client Rights and Responsibilities.**

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

- (d) the subsidy amount for that provider;
- (e) the subsidy deduction amount;
- (f) the date a two party check was mailed to the client;
- (g) a copy of the two party check on a need to know basis; and
- (h) the month the client is scheduled for review or reestablishment.

(10) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

#### **R986-700-704. Establishment of Paternity.**

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

#### **R986-700-705. Eligible Providers and Provider Settings.**

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
  - (i) licensed homes;
  - (ii) licensed family group homes; and
  - (iii) licensed child care centers.
- (b) license exempt providers who are not required by law to be licensed and are either:
  - (i) license exempt centers; or
  - (ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

- (a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;
- (b) because a child in the home has special needs which cannot be otherwise accommodated; or
- (c) which will accommodate the hours when the client needs child care.
- (d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

- (a) the provider be at least 18 years of age and be legally able to work in the United States;
- (b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to

outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met.

#### **R986-700-706. Provider Rights and Responsibilities.**

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

**R986-700-707. Subsidy Deduction and Transitional Child Care.**

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;

(b) transitional child care. Transitional child care is available during:

(i) the six months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the period covered by the diversion payment; or

(ii) the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

**R986-700-708. FEP, and Diversion CC.**

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

**R986-700-709. Employment Support (ES) CC.**

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical,

emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in

UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps\*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

**R986-700-710. Income Limits for ES CC.**

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income;

and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

**R986-700-711. ES CC to Support Education and Training Activities.**

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

- (i) obtaining a high school diploma or equivalent,
- (ii) adult basic education, and/or
- (iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24-month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

**R986-700-712. CC for Certain Homeless Families.**

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and

income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

**R986-700-713. Amount of CC Payment.**

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed \$100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

**R986-700-714. CC Payment Method.**

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a



CC check without prior notice to the client if:

- (a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or
- (b) when the check has been outstanding for at least 90 days; or
- (c) the check is lost or stolen.
- (5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

#### **R986-700-715. Overpayments.**

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

- (a) for a period of one year for the first occurrence of fraud;
- (b) for a period of two years for the second occurrence of fraud; and
- (c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

#### **R986-700-716. CC in Unusual Circumstances.**

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client

enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of six hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) CC with a provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 9 p.m. and 6 a.m. except;

- (a) for a child under the age of 24 months old,
- (b) to accommodate a special needs child, or
- (c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.

#### **R986-700-717. Child Care for Children With Disabilities or Special Needs.**

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

- (a) Social Security Administration showing that the child is a SSI recipient,
- (b) Division of Services for People with Disabilities,
- (c) Division of Mental Health,
- (d) State Office of Education, or
- (e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

- (a) the child's name,
- (b) a description of the child's disability, and
- (c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

#### **R986-700-718. Provider Disqualification.**

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and

interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in

rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

(5) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized funds were accepted from a client or taken as provided in this section but no CC services were provided during the month, the Department will send a demand letter to the provider establishing the overpayment and the provider will be given 30 days to repay the Department or enter into an installment payment agreement. Under an installment agreement, the provider must agree to make monthly payments and pay the full amount within a maximum of six months of the date of the demand letter. If full payment is not received within six months, the provider may be referred for criminal prosecution and will no longer be an approved provider as provided under R986-700-706(4). This is true even if the provider has never removed or retained CC funds in the past.

#### **R986-700-751. Background Checks.**

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

#### **R986-700-752. Definitions.**

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

- (a) if committed by a person 18 years of age or older;
  - (i) severe or chronic physical abuse;
  - (ii) sexual abuse;
  - (iii) sexual exploitation;
  - (iv) abandonment;
  - (v) medical neglect resulting in death, disability, or serious illness;
  - (vi) chronic or severe neglect; or
  - (vii) chronic or severe emotional abuse
- (b) if committed by a person under the age of 18:
  - (i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or
  - (ii) sexual behavior with or upon another child which indicates a significant risk to other children.

#### **R986-700-753. Criminal Background Screening.**

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

#### **R986-700-754. Exclusion from Child Care Due to Criminal Convictions.**

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a

misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be

disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

**R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.**

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

**R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.**

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

**R994. Workforce Services, Unemployment Insurance.****R994-204. Covered Employment.****R994-204-201. Localization of Services.**

Employment is covered under the Act if all of a worker's service is performed within Utah. Workers who perform services for one employer in more than one state are covered in Utah under certain circumstances.

**(1) Service Localized in this State.**

The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but the service outside of Utah consists of isolated transactions or is otherwise incidental or transitory to the service in Utah. Some of the factors which might indicate that the service is incidental or transitory are:

(a) the employer and the worker intend the service outside of Utah to be an isolated transaction, and not a regular part of the worker's duties;

(b) the worker intends to return to Utah upon completion of the work assignment, rather than move to the other state;

(c) the service performed outside the state is different in nature from the service performed within Utah;

(d) it is anticipated that the worker will be performing services outside the state for 12 months or less however this length of time is intended only as a yardstick and other variables, such as the terms of the contract of hire, whether written or oral, will be considered.

**(2) Service Is Not Localized in Any State But Some Service is Performed in Utah.**

If the service is not localized in any state but some of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

**(a) The Base of Operations is in Utah.**

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and to which he or she customarily returns for instructions from the employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive direction and instructions.

(b) The Place from Where Service is Controlled or Directed is in Utah.

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

**(c) The Place of Residence is in Utah.**

If the conditions in paragraphs (a) or (b) of this subsection do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah if the worker lives in Utah and performs some of his or her services in Utah.

**(3) Service Is Not Localized in Any State and No Service is Performed in Utah.**

If the service is not localized in any state and none of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

**(a) The Base of Operations is in Utah.**

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and customarily returns for instructions from the employer, to

replenish stocks or materials, to repair equipment or to perform any other function necessary in the worker's trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive his or her direction and instructions.

(b) The Place from Where the Service is Controlled or Directed is in Utah.

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if the worker is controlled and directed from Utah. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

**(4) Reciprocal Coverage.**

If after applying all of the above tests to a given set of circumstances, the worker's service is found not to be subject to any one state, the employer may elect to cover all of the worker's service in one state. This election must be made under the provisions for reciprocal coverage arrangements found in Section 35A-4-106. The Department will approve reciprocal coverage and allow an employer to cover a worker's entire service in Utah if:

(a) the employer petitions for coverage;

(b) part of the worker's service is in Utah, the worker lives in Utah, or the worker maintains a place of business in Utah; and

(c) the other state or states approve the election

**R994-204-202. Outside Commissioned Salespersons in Covered Employment.**

Outside commissioned salespersons are excluded from the Act under the outside commissioned salesperson exclusion contained in Section 35A-4-205(1)(t) unless all of the following "traveling or city salesperson" conditions apply:

**(1) The Salesperson is Engaged on a Full-Time Basis.**

Full-time under this section means the salesperson devotes at least 80% of his or her working time in any quarter to the solicitation of orders for one employer. This is true even if the salesperson works for the employer less than 40 hours per week. For example, a salesperson who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full-time basis.

**(2) The Salesperson Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.**

The salesperson must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through such a customer, such as a bookstore or gift shop would be included as a "retailer." The salesperson must solicit orders from the following types of customers:

(a) Wholesalers who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers and retailers for the purpose of resale.

(b) Retailers who sell merchandise to the ultimate consumers.

(c) Contractors who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.

(d) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose

primary function is the furnishing of food, lodging, or both food and lodging.

(3) The Salesperson Takes Orders for Merchandise for Resale or Supplies Used in Business.

(a) Merchandise for resale includes goods, wares and commodities that ordinarily are the objects of trade and commerce and that are purchased for resale. This term refers specifically to tangible materials that do not lose their identities between the time of purchase and the time of resale.

(b) Supplies for use in the customer's business operations means articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items that are not "merchandise for resale" or capital items. Services such as radio time and advertising space, are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."

(4) The contract of service contemplates that substantially all of the services are to be performed personally by the worker. This means that the services to which the contract relates will not be delegated to any other person by the worker who undertakes under the contract to perform such services; and

(5) The worker does not have a substantial investment in facilities used in connection with the performance of his or her services. The facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and

(6) The services are part of a continuing relationship with the person for whom the services are performed.

#### **R994-204-203. Domestic Service Included in Covered Employment.**

Subsection 35A-4-204(2)(k) defines when domestic services, that are exempt under Subsection 35A-4-205(1)(f), become covered employment.

(1) \$1000 in a Calendar Quarter.

Domestic services performed in a private home, local college club or local chapter of a college fraternity or sorority are exempt unless the employer pays cash remuneration of \$1000 or more in one or more calendar quarter in the current calendar year or the preceding calendar year. Cash wages include wages paid by cash, check, or money order. Cash wages do not include the value of food, lodging, clothing, and other non-cash items. However, cash given to an employee in lieu of these items is considered to be cash wages.

(2) Services That Are Domestic Services.

Domestic services include services of a household nature in or about any of the places listed in subsection (1) of this section. Domestic services include work done by:

- (a) baby-sitters
- (b) cleaning people
- (c) drivers
- (d) housekeepers
- (e) nannies
- (f) health aids
- (g) maids
- (h) caretakers
- (i) yard workers
- (j) cooks
- (k) butlers

(3) Services That are Not Domestic Services.

Services that are not of a household nature such as secretarial services performed in a private home or services related to remodeling or building a private home, local college club or local chapter of a college fraternity or sorority are not domestic services.

(4) Private Home.

A private home is a fixed place of abode of an individual or family. This may include a dwelling unit in an apartment building or hotel.

(5) Local College Club or Local Chapter of a College Fraternity or Sorority Does Not Include an Alumni Club or Chapter.

(6) All Remuneration is Reportable.

Once the \$1000 cash threshold is met, all payments including cash and non-cash payments are reportable as wages.

#### **R994-204-301. Independent Contractor Services.**

(1) An independent contractor is a worker who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the employer's control and direction while performing services for the employer. A worker must clearly establish his or her status as an independent contractor by taking steps that demonstrate independence indicating an informed business decision has been made.

(2) Payments to or through another entity for personal services performed by a worker is exempt from employment if the personal services meet the provisions of Subsection 35A-4-204(3).

#### **R994-204-302. Independent Contractor Determination.**

(1) The Department will determine the status of a worker based upon information provided by the employer, the worker, and any other available source.

(2) If a worker files a claim for benefits and the Department, as the result of an audit, investigation, or declaratory ruling, has made a determination that the worker is an independent contractor and his or her services for an employer are exempt from coverage, any earnings from those services for that employer will be excluded from the claimant's monetary determination. The claimant may protest the monetary determination by filing an appeal as provided in Section R994-204-402.

#### **R994-204-303. Factors for Determining Independent Contractor Status.**

Services will be excluded under Section 35A-4-204 if the service meets the requirements of this rule. Special scrutiny of the facts is required to assure that the form of a service relationship does not obscure its substance, that is, whether the worker is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in Subsections R994-204-303(1)(b) and R994-204-303(2)(b) of this section are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the service and the factual context in which it is performed. Additionally, some factors do not apply to certain services and, therefore, should not be considered.

(1) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will determine whether a worker is customarily engaged in an independently established trade or business:

(i) Separate Place of Business. The worker has a place of business separate from that of the employer.

(ii) Tools and Equipment. The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. However, "tools of the trade" used by certain trades or crafts do not necessarily demonstrate independence.

(iii) Other Clients. The worker regularly performs services of the same nature for other customers or clients and is not required to work exclusively for one employer.

(iv) Profit or Loss. The worker can realize a profit or risks a loss from expenses and debts incurred through an independently established business activity.

(v) Advertising. The worker advertises services in telephone directories, newspapers, magazines, the Internet, or by other methods clearly demonstrating an effort to generate business.

(vi) Licenses. The worker has obtained any required and customary business, trade, or professional licenses.

(vii) Business Records and Tax Forms. The worker maintains records or documents that validate expenses, business asset valuation or income earned so he or she may file self-employment and other business tax forms with the Internal Revenue Service and other agencies.

(c) If an employer proves to the satisfaction of the Department that the worker is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(2) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the worker who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the worker is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of a worker:

(i) Instructions. A worker who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

(ii) Training. Training a worker by requiring or expecting an experienced person to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

(iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction. The coordinating and scheduling of the services of more than one worker does not indicate control and direction.

(iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

(v) Personal Service. A requirement that the service must be performed personally and may not be assigned to

others indicates the right to control or direct the manner in which the work is performed.

(vi) Continuous Relationship. A continuous service relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship does not exist where the worker is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

(vii) Set Hours of Work. The establishment of set hours or a specific number of hours of work by the employer indicates control.

(viii) Method of Payment. Payment by the hour, week, or month points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job. Control may also exist when the employer determines the method of payment.

#### **R994-204-401. Safe Haven Created by Independent Contractor Determinations.**

The "safe haven" provision of 35A-4-204(4) allows an employer to rely on a declaratory order, ruling, or final determination by the Department that determines the independent contractor status of a worker or class of workers. A determination can be made at the request of an employer or by the Department as the result of an audit or status investigation. The final determination will only determine whether the employer is liable to pay contributions on payments made to the workers in question and does not affect the worker's right to challenge the determination at a more appropriate time like when the work relationship has ended and a claim for benefits has been filed. The worker, or class of workers, are not bound by the determination in the event a worker later files a claim for unemployment benefits.

#### **R994-204-402. Procedure for Issuing a Safe Haven Determination.**

(1) If the issue of the status of a worker or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department will determine the status on the basis of the best information available at the time. A request for a declaratory order will be denied if there is a pending claim for benefits by a worker who would be affected by the order.

(2) A worker whose status is determined as a result of an audit or declaratory order is not required to file a written consent to the determination pursuant to Subsection 63G-4-503(3)(b). Any consent given by the worker is invalid and will be considered to be in violation of Subsection 35A-4-103(1)(c)(ii).

(3) If the issue of a worker's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the worker or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the worker's independent contractor earnings as wage credits for the base period on the basis of the prior status determination. The worker may protest the determination by filing an appeal within 15 days of the date of the notice. Upon receipt of a protest the Department will review the status of the worker. On the basis of its review, the Department will issue a new determination which will either affirm, reverse, or revise the original determination. The new determination will be mailed to the parties and can be appealed by the employer or the worker as though it were an "initial Department determination" as

provided in rule Sections R994-508-101 through R994-508-104.

**R994-204-403. Employer Reliance on Official Determination.**

If a declaratory order or final audit finding has been issued concluding that a worker or class of workers are independent contractors, the employer will have no liability to pay unemployment contributions on payments made to the worker or workers, except as provided in Section R994-204-404.

**R994-204-404. Effect of New Determination on Employer.**

If a new determination by the Department, an administrative law judge, or the Workforce Appeals Board holds that the status of a worker or class of workers to which the individual belonged is that of employee for purposes of the Act, the employer is liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.

**KEY: unemployment compensation, employment tests, independent contractor**

**July 1, 2007**

**35A-4-204**

**Notice of Continuation March 31, 2010**



**R994. Workforce Services, Unemployment Insurance.****R994-205. Exempt Employment.****R994-205-101. Exempt Domestic Service.**

Domestic services are exempt under the Act, provided they are not included in covered employment under Subsection 35A-4-204(2)(k).

**R994-205-102. Exempt Family Service.**

Certain family service is exempt from coverage under the Act based upon the type of employing entity.

(1) Sole proprietorship exempt family service includes the following relationships:

(a) A worker employed by his or her spouse.

(b) A parent employed by his or her son or daughter. The exemption also applies to a stepparent employed by his or her stepchild.

(c) A child under the age of 21 employed by his or her parent regardless of the child's marital status. The exempt relationship is met even if the child is an adopted child, stepchild, or foster child. The foster child must be living with the foster parent.

(2) Partnership family service is exempt from coverage if the worker has an exempt family relationship to all partners. Exempt family relationships are the same relationships as for sole proprietorships in subsection (1) of this section. However, it is not necessary for the same relationship to exist between the worker and each partner.

(a) Examples of partnership family relationships that are exempt include:

(i) A child employed by a partnership composed of the child's parents.

(ii) A woman employed by a partnership composed of her husband and her son.

(b) Examples of partnership family relationships that are not exempt include:

(i) A woman employed by a partnership composed of her husband and his brother is not exempt because the required family relationship between the woman and her brother-in-law does not exist.

(ii) A man employed by a partnership composed of his wife and his son-in-law is not exempt because the required family relationship between the man and his son-in-law does not exist.

(3) There are no exempt family relationships in corporations, limited liability companies, and any other entity types not discussed in this section.

**R994-205-103. Exempt Employees Hired Temporarily for a Disaster.**

The Act excludes the services of governmental entity or Indian tribe employees hired solely on a temporary basis for disaster-type emergencies.

(1) Temporary basis employment is not the same as intermittent or irregular employment. Intermittent or irregular employment involves an on-going relationship, such as workers with an "on-call" status.

(2) Disaster type emergencies are those that affect the community on a wide scale, such as a forest fire, storm, or flood. Incidents that affect a few individuals, such as a house fire or automobile accident are not disaster type emergencies.

**R994-205-104. Exempt Casual Labor.**

(1) Casual labor is exempt under the Act if:

(a) The service is not in the course of the employing unit's trade or business;

(b) The payment for such service is less than \$50 in a calendar quarter; and

(c) The worker performs such service on some portion of a day for less than 24 days in a calendar quarter or less

than 24 days during the preceding calendar quarter.

(2) Services "not in the course of the employing unit's trade or business" include services that do not promote or advance the trade or business, such as services performed in connection with the employer's hobby or repairs to the employer's private home.

(3) Casual labor does not apply to domestic service exempt under subsection 35A-4-205(1)(f).

(4) Casual labor does not apply to any services performed for a corporation or limited liability company.

(5) Services performed by a worker for a property owner in regard to building or remodeling the owner's home are exempt if the requirements in subsection (1)(a) of this section are satisfied.

**R994-205-105. Exempt Commission Insurance Sales.**

Employment does not include services performed as an insurance agent or solicitor if payment for such services is solely by way of commission.

(1) An insurance solicitor is an employee of an insurance agent and is empowered to sell insurance on behalf of the agent. The solicitor usually does not have binding authority, and the business generated by the solicitor is usually owned by the agent, and not the solicitor.

(2) Services performed by a worker selling insurance are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for insurance sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

**R994-205-106. Exempt Real Estate Sales.**

Employment does not include services as a licensed real estate agent if payment for such services is solely by way of commission.

(1) The "licensed" requirement refers to the license issued by the Utah Division of Real Estate to principal real estate brokers, associate real estate brokers, and real estate sales agents.

(2) The services performed as a real estate agent are those activities generally associated with the sale of real property. Such services include appraising property, advertising and showing property, closing sales, acquiring a lease to the property, and recruiting, training and supervising other salespersons. The services performed as a real estate agent do not include the management of property.

(3) Services performed by a worker as a licensed real estate agent are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for real estate sales

services is a salary, all of the services are covered employment and the total payment, salary and commission is subject to contribution payments.

(b) If a worker performing real estate sales services is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If a worker performing real estate sales services is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances against future commissions are considered to be payment solely by way of commission.

(4) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

#### **R994-205-107. Exempt Outside Sales.**

The Act excludes the services of salespersons if the services are performed outside the employer's place of business, the salesperson is paid solely by way of commission, the services are not employment at common law, and the services are not employment as a traveling or city salesperson defined in Subsection 35A-4-204(2)(i).

(1) The employer's place of business is defined as an establishment where business is conducted, services are rendered, retail sales are made, or goods are manufactured, stored, or processed. This definition also includes temporary places of business such as booths or exhibits at trade shows, fairs and festivals.

(2) A commission is defined as a payment calculated as a percentage of the sales volume or value. Outside sales services are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for outside sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both outside commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. However, if the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

(3) Employment at common law is defined by the Internal Revenue Service's current common law rules.

(4) An outside salesperson may perform incidental activities at the employer's place of business, such as writing up and transmitting orders, replenishing sales supplies, or attending sales meetings, provided such activities are not

routine, without losing the classification as an outside salesperson.

#### **R994-205-201. Included and Excluded Service.**

When a worker performs both included and excluded services for an employer during a pay period, all the services are considered to be included or excluded for that pay period, depending on the time spent in each activity.

(1) Time Spent in a Pay Period.

(a) If 50% or more of a worker's time is spent performing services that constitute employment, all the services are considered to be covered employment.

(b) This 50% test is applied to each pay period. A worker could have all services included in covered employment during one period and excluded in another.

(2) Employer Must Verify Time Spent.

In order to have all services performed by a worker excluded from covered employment, the employer must show to the satisfaction of the Department that less than 50% of the time spent in any pay period is for services that constitute employment.

(3) Pay Period.

Subsection 35A-4-205(2) does not apply if there is no regular pay period, the pay period covers more than 31 consecutive days or there are separate pay periods for the included and excluded services.

**KEY: unemployment compensation, employment tests**

**July 1, 2007**

**35A-4-205**

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**R994. Workforce Services, Unemployment Insurance.****R994-206. Agricultural Labor.****R994-206-101. Definition of Agricultural Labor.**

Agricultural labor is exempt under Subsection 35A-4-205(1)(e) of the Act unless it is covered under Subsection 35A-4-204(2)(j). Subsection 35A-4-204(2)(j) covers larger agricultural employers based on wages paid or number of workers employed.

## (1) Definition of Agricultural Terms.

The terms used in Section R994-206-101 are defined as follows:

## (a) Agricultural Commodities.

Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts, vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.

## (b) Horticultural Commodities.

Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.

## (c) Raising and Harvesting.

Raising includes planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes caring for, feeding, shearing, breeding, training and management. Harvesting includes picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are made available for sale.

## (d) Farm.

A farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes, such as display, storage, and fabrication of wreaths, corsages, and bouquets, do not constitute "farms".

(2) Agricultural Labor as Defined in Subsection 35A-4-206(1)(a).

(a) Agricultural labor includes services performed on a farm by a worker for any person in connection with any of the following activities:

## (i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(b) Services performed in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry constitute agricultural labor only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor.

(3) Agricultural Labor as Defined in Subsection 35A-4-206(1)(b).

(a) Agricultural labor includes the following activities performed by a worker in the employ of the owner or tenant or other operator of one or more farms, provided the major part, defined as 50% or more, of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing

land of brush and other debris, left by a hurricane, storm, flood, or other natural disaster.

(b) The services described in subparagraph (a)(i) of this section may include services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms operated by the person employing them. Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term "agricultural labor" does not include services performed by workers of commercial concerns that contract with a farmer to repair, maintain, or renovate farm properties.

(4) Agricultural Labor as Defined in Subsection 35A-4-206(1)(c).

Agricultural labor includes the following activities performed by a worker in the employ of any person without regard to the place where such services are performed:

(a) the production or harvesting of agricultural commodities defined in the Federal Agricultural Marketing Act, 12 U.S.C. 1141j. These commodities are limited to crude gum, also known as oleoresin, from a living tree and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum; or

(b) the ginning of cotton; or

(c) the operation or maintenance of ditches, canals, reservoirs or water ways if not owned or operated for profit and used primarily for farming purposes.

(5) Agricultural Labor as defined in Section 35A-4-206(1)(d).

(a) Agricultural labor includes services performed by a worker in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity if:

(i) Such services are performed by the worker in the employ of an operator of a farm or in the employ of a group of operators of farms, other than a cooperative organization; and

(ii) Such services are performed with respect to the commodity in its unmanufactured state; and

(iii) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

(b) The term "operator of a farm" as used in this section means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

(c) The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term "organization" includes corporations, joint-stock companies, and associations which are treated as corporations pursuant to section 7701(a)(3) of the Internal Revenue Code. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

(d) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple syrup or maple sugar do not constitute agricultural labor. On the other hand, services rendered in the cutting and

drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation do not constitute agricultural labor.

(e) The term "commodity" refers to a single agricultural or horticultural product, for example, all apples are to be treated as a single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in subparagraph (a)(iii) of this subsection has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this paragraph are performed by a particular worker shall be determined on the basis of the pay period in which such services were performed by such worker.

(f) The services described in this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in this paragraph must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (3) of this section.

(6) Examples of the Application of the Definition of Agricultural Labor.

(a) Raising and Selling.

Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

(b) Agricultural Labor Included and Excluded Services.

If the same worker performs both agricultural and nonagricultural labor, the entire service will be considered to be agricultural labor if 50% or more of the time in a pay period was spent in agricultural labor. For reference see Subsection 35A-4-205(2).

(c) Poultry Hatchery.

Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the eggs. Services for a commercial hatchery that is not part of a farm that raises poultry are not agricultural labor.

(d) Raising Livestock.

Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is not agricultural labor. Services in connection with racing horses, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

(e) Forestry, Lumbering and Landscaping.

Services performed in forestry, lumbering and landscaping are not agricultural labor.

(f) Brine Shrimp Harvesting.

Services performed in harvesting brine shrimp are not agricultural labor unless the services are performed on a farm.

**KEY: unemployment compensation, employment tests**  
**July 1, 2007** **35A-4-206**  
**Notice of Continuation March 31, 2010**

**R994. Workforce Services, Unemployment Insurance.****R994-304. Special Provisions Regarding Transfers of Unemployment Experience and Assigning Rates.****R994-304-101. Transfer of a Trade or Business, or Portion Thereof, with Common Ownership, Management, or Control.**

(1) The term "person" includes an individual, trust, estate, partnership, association, limited liability company, corporation, government entity, or Indian tribe. The "predecessor employer" is the employer that transfers its trade or business, or a portion of its trade of business, to another employer. The "successor employer" is the employer that acquires the trade or business, or a portion of the trade or business.

(2) Common ownership exists if an employer transfers a trade or business, or a portion of a trade or business, to another employer and at the time of the transfer:

(a) the predecessor employer owns 50% or more of the trade or business of the successor employer. For entities that issue shares of stock ownership, 50% or more of the "voting shares" of stock interest must be common to both; or

(b) an individual with a controlling interest in the predecessor trade or business, transfers that controlling interest to an individual in the successor trade or business and the parties are related in one of the following ways:

- (i) spouse;
- (ii) parent;
- (iii) step parent;
- (iv) child;
- (v) step child;
- (vi) sibling; or
- (vii) step sibling.

(3) The Department will determine common management or control using the best available evidence.

(a) Common management will be found if the predecessor and successor employers have the same or similar:

- (i) managers, officers, board of directors;
- (ii) personnel and human resource policies;
- (iii) operating procedures;
- (iv) sales and pricing policies;
- (v) collection procedures;
- (vi) financing policies;
- (vii) accounting practices; or
- (viii) purchasing practices.

(b) Common control will be found where the predecessor and successor employers have the same or similar:

(i) control of the assets used to conduct the business enterprise;

(ii) financing and/or leasing arrangements;

(iii) contracts; or

(iv) business, professional, and regulatory licenses of the business enterprise.

(4) The factors listed in subsections 3(a) and (3)(b) of this section are not exclusive and are intended as aids for analyzing the facts of each case. The degree of importance of each factor in those subsections varies depending on the nature of the trade or business transferred. Some do not apply to certain trades or businesses and, therefore, should not be given any weight. The Department will scrutinize the facts in each case to assure that the form of the transfer does not obscure the substance of the transfer.

**R994-304-102. Notification Requirements.**

(1) All parties to a transfer described in Section 35A-4-304(3)(a) must provide the following information to the Department within 30 days of the transfer date:

- (a) the effective date of the transfer.

(b) the percentage of the assets, trade or business, and workforce transferred.

(c) the reason for the transfer.

(d) the following information for both the predecessor and the successor employers:

(i) name;

(ii) street address;

(iii) Utah Unemployment Insurance Registration Numbers, if one has been assigned; and

(iv) Federal Employer Identification Numbers (FEIN), if one has been assigned.

(e) the name and Social Security number (SSN) or FEIN of any successor employer who was also a predecessor employer, or any individual who is related to the predecessor. Related means to have a family relationship as described in Section R994-304-101(2)(b).

(f) common management and control practices that were retained from the predecessor employer.

(g) any other information requested by the Department.

**R994-304-103. Recalculation and Effective Date of Contribution Rates.**

Any employer that is a party to a transfer of an employer's trade or business described in Section 35A-4-304(3)(a) shall have its contribution rate recalculated. The effective date of the recalculation shall be the first day of the calendar quarter following the actual date of the transfer, unless the actual transfer occurred on the first day of a calendar quarter, in which case the recalculation takes effect on that day.

**R994-304-104. Identification of the Transfer or Acquisition of an Employer's Workforce.**

The Department will develop and implement programs to aid in the detection and identification of employers that transfer or acquire all or a portion of another employer's workforce.

**KEY: unemployment experience rating  
June 1, 2005  
Notice of Continuation March 31, 2010**

**35-A-4-304**

**R994. Workforce Services, Unemployment Insurance.****R994-402. Extended Benefits (EB).****R994-402-201. General Definition.**

When a claimant has been unable to find work for an extended period of time and has exhausted all of his or her regular benefits, EB may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for EB as the original claim is extended with the same weekly benefit amount. The maximum benefit amount for a claimant is one-half of the amount of his or her original regular claim up to a maximum of 13 times the weekly benefit amount. All EB stop when the unemployment rate drops below a certain level, even if the claimant has not used all of his or her EB. If the claimant has sufficient additional wage credits and can qualify for a new regular claim, EB are not allowed. There is no waiting week on an EB claim. Availability requirements for EB are different from those for regular claimants. Unless the claimant has good prospects as defined in R994-402-205, the EB claimant must have no occupational restrictions, must reduce wage expectations and increase his or her work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.

**R994-402-202. General Requirements for EB.**

(1) Notwithstanding the provisions of the Act concerning regular benefits, a claimant is ineligible for EB during any week of unemployment in the claimant's eligibility period if the Department finds that during such period:

(a) the claimant failed to accept any offer of suitable work as defined in R994-402-204 or failed to apply for any suitable work to which he or she was referred by the Department; or

(b) he or she failed to make an active, good faith effort to secure employment as provided in Section R994-402-207.

(2) Any claimant who has been found ineligible for EB under Subsection R994-402-202(1) will be denied benefits until he or she has performed services in bona fide covered employment for at least four subsequent weeks, whether or not consecutive, and earned wages for such services equal to at least six times the claimant's weekly benefit amount.

(3) Notwithstanding R994-402-204, no claimant will be denied EB for failure to accept an offer of, or apply for, any job which meets the definition of suitability as described in that subsection if:

(a) the position was not offered to the claimant in writing as defined in R994-402-206 or was not listed with the Department of Workforce Services;

(b) such failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-204 or

(c) the claimant meets the requirements of "good prospects" as defined in R994-402-205.

(4) No work is considered to be suitable work unless it complies with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code as provided in Subsection 35A-4-405(3).

(5) The Department shall refer any claimant entitled to EB to any suitable work which meets the criteria prescribed in R994-402-204.

**R994-402-203. Eligibility for EB.**

To be eligible for EB the claimant must:

(1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) and his or her benefit year must have ended

after the beginning of the EB period;

(2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;

(3) file for EB in accordance with instructions;

(4) meet EB requirements for availability and work search; and

(5) accept suitable work.

**R994-402-204. Suitable Work.**

(1) Suitable work for EB claimants includes work:

(a) in any occupation within the claimant's capabilities unless he or she can show that his or her prospects for obtaining work in his or her regular occupation are good, as defined in Subsection R994-402-205 and

(b) paying the greater of the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.

(2) Suitable work for EB claimants does not include work:

(a) available as the result of a strike or labor dispute;

(b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he or she does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his or her locality);

(c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any labor organization;

(d) which would not be considered suitable for a regular claimant, such as unsafe working conditions or work requiring a move or travel beyond normal commuting distance. Except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.

**R994-402-205. Good Prospects.**

When a claimant has a definite assurance of full-time employment in his or her customary occupation to begin within four weeks the claimant is considered to have good prospects. He or she must continue to seek work, but suitability will be determined under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition in R994-402-204.

**R994-402-206. Position Offered in Writing.**

A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral verbally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.

**R994-402-207. Systematic and Sustained Work Search.**

(1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 4 employers each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not contacted within the last 90 days.

(2) Except for claimants who have received Department approval under section R944-403-201, there is no good cause exception for failure to make a systematic and sustained work

search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(c) unless the claimant was hospitalized for treatment of an emergency or life-threatening condition. Benefits may be allowed if the claimant failed to make the required work search because he or she was on jury duty and regular unemployment benefits would have been allowed under similar circumstances. If the claimant made the required work search but was unable to work or unavailable for work for more than half the normal workweek, he or she might be found ineligible under Sections R994-403-111c and R994-403-112c.

(3) If the claimant has obtained part-time work, he or she is still required to make a work search on those days when he or she is not working. The number of contacts may be reduced if the claimant is working a substantial amount of time in the part-time job.

(4) Work search requirements may be suspended if the Department determines that severe weather conditions or other calamity has forced a suspension of such activities by most members of the community.

#### **R994-402-208. Claimant Responsibilities.**

(1) EB claimants must report all information as requested by the Department.

(2) An EB claimant is required to keep a detailed record of the employers contacted including:

- (a) the name and address of the employer,
- (b) the date of contact with the employer,
- (c) the person contacted if personal contact is made,
- (d) the result of the contact,
- (e) the type of work sought,

(3) Failure to keep records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

#### **R994-402-209. Period of Disqualification.**

A claimant who fails to accept an offer of suitable work or fails to actively seek work will be denied benefits for the week in which such failure occurs and for the following weeks until he or she has had employment during at least four subsequent weeks and has earned at least six times his or her weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide, covered, employment.

#### **R994-402-210. Requalification Requirement Following a Disqualification for a Crime in Connection with Employment.**

All disqualifications for regular unemployment benefits continue to be in effect on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive EB until he or she has returned to bona fide covered employment and earned at least six times his or her weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

#### **R994-402-211. Out of State Claimants.**

A claimant who resides in another state but is filing against Utah under the interstate benefit payment plan is only entitled to two weeks of EB while residing in another state if the state of residence is not in an extended benefit period. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive,

no further payments can be made.

#### **R994-402-212. Overpayments.**

Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

#### **R994-402-601. Notice.**

(1) Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department will make a public announcement and give personal notice calculated to reach the largest practicable number of potentially eligible persons within the state.

(2) The notice given at the beginning of an extended benefit period will state

(a) the first date on which potential claimants may file a claim for, and become eligible for, extended benefit payments,

(b) eligibility criteria for EB, and

(c) what action individuals must take to protect their benefit rights.

(3) Whenever there has been a determination that an EB period will end, the Department will provide notice to all claimants currently filing claims for EB of the forthcoming end of the EB period and its effect on the claimant's right to EB.

#### **R994-402-602. Effective Date of EB Claim.**

The effective date of claims for EB will be the Sunday of the first week during which EB are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b).

**KEY: unemployment compensation, employee recruitment, extended benefits**

**April 1, 2010**

**35A-4-402(2)**

**Notice of Continuation May 17, 2007**

**35A-4-402(6)(a)**

**R994. Workforce Services, Unemployment Insurance.****R994-406. Fraud, Fault and Nonfault Overpayments.****R994-406-101. Claimant Responsible for Providing Complete, Correct Information.**

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. The claimant is also responsible for following all Department instructions.

(2) The claimant can not shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his or her claim.

**R994-406-201. Nonfault Overpayments.**

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

**R994-406-202. Method of Repayment of Nonfault Overpayments.**

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

**R994-406-203. Waiver of Recovery of Nonfault Overpayments.**

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) is currently eligible to receive unemployment benefits from the state of Utah and has filed a weekly claim against Utah within the last 27 days,

(b) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

(c) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time

the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the overpayment was made pending a decision on a timely waiver request which is ultimately granted.

**R994-406-301. Claimant Fault.**

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-



203(1)(d) and (2)

**R994-406-302. Repayment and Collection of Fault Overpayments.**

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 100% of the benefit payment to which the claimant is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments. However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(c) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30 days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement, the Department will allow the claimant to pay in installments by notifying the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

(i) \$3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement

(ii) \$3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement

(iii) \$5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement

(iv) \$10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-203(1)(b)(iii). On a

periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-201 or R994-406-301 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

**R994-406-401. Claimant Fraud.**

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card issued by the Department (EPPICard or card). Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN

immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

(4) A claimant is required, under R994-403-114c, to immediately notify the Department if the claimant is incarcerated. Upon notification, the Department will stop all unemployment benefits to the claimant until the claimant notifies the Department of his or her release from incarceration. If a claimant fails to notify the Department of his or her incarceration, any claims made during the incarceration period will be considered fraudulent.

#### **R994-406-402. Burden and Standard of Proof in Fraud Cases.**

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

#### **R994-406-403. Fraud Disqualification and Penalty.**

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is

made.

(4) Overpayment and Penalty.

(a) For any fraud decision where the initial fraud determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud. "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of \$100 and reports no earnings during a week when he or she actually had \$50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive \$80 for that week and was thus overpaid the amount of \$20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered an overpayment. The claimant would also be liable to repay, as a civil penalty, the \$20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment and penalty of \$120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud. In the example in subsection (3)(a) of this section, the overpayment would be \$20 and the penalty would be \$20 for a total due of \$40. The overpayment and penalty would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

#### **R994-406-404. Repayment and Collection of Fraud Overpayments and Penalties.**

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks prior to the penalty period to reduce overpayments and penalties.

#### **R994-406-405. Future Eligibility in Fraud Cases.**

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a

claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

**R994-406-406. Agency Error in Determining Disqualification Periods.**

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

**KEY: overpayments, unemployment compensation**

<b>April 1, 2010</b>	<b>35A-4-406(2)</b>
<b>Notice of Continuation May 22, 2007</b>	<b>35A-4-406(3)</b>
	<b>35A-4-406(4)</b>
	<b>35A-4-406(5)</b>